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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~277.~~ 64

THOMAS PITTS, EXECUTOR OF H. NORTON STRONG, DECEASED, CLAIMANT OF STEAMER MAYFLOWER, APPELLANT,

vs.

THE RIVER AND LAKE SHORE STEAMBOAT LINE, OWNERS OF THE STEAMER DOVE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 18, 1873.

Affirmed
Clifford
to write

SUPREME COURT OF THE UNITED STATES.

No. 277.

THOMAS PITTS, EXR. OF H. NORTON STRONG, DEC'D, CLAIMANT OF STEAMER MAYFLOWER, APPELLANT,

VS.

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1 In admiralty.

To the judge of the district court of the United States for the eastern district of Michigan:

The libel of the River and Lake Shore Steamboat Line, a body corporate under and by virtue of the laws of the in the State of Michigan, against the steam-propeller Mayflower, whereof is or lately was master, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision and damage, civil and maritime. And thereupon the said libelant doth allege and propound as follows:

First. That your libelant, at the time when the cause of action hereinafter stated arose, was the owner of the steamer Dove, which said Dove, as well as the aforesaid Mayflower, were vessels of twenty tons burthen and upwards, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable waters connecting said lakes, within the true meaning and intent of the act of Congress.

Second. That on the 31st day of May, A. D. 1869, the said Dove being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and necessary complement of officers and men stationed at their proper posts, and upon the look-out for the protection and safety of said vessel, and with her proper and usual signal-lights properly displayed and brightly burning, was bound on a voyage from Detroit to Port Huron and intermediate ports in Canada and Michigan. That about the hour of eleven o'clock in the night-time said Dove was proceeding up the St. Clair River, close in on the American channel bank, and just below Ricard's dock, so called; that the night was somewhat foggy, and said Dove was proceeding at a very slow rate of speed, and sounding her fog-whistle at short intervals, and in such a manner as to indicate to all approaching steamers that she was proceeding up close to the American channel bank.

Third. That at the same time the said Mayflower, with insufficient officers and crew, and they not attending to their duty, and with no colored signals-lights properly displayed and burning, and blowing no fog-whistle, as the law demands, and at too great speed, was running down St. Clair River.

Fourth. That said Dove constantly signalled the steamers that might be approaching to keep to the left by two signal-blasts. That when she saw said Mayflower, she again gave two blasts of her whistle, stopped and backed, and although close to the American channel bank, in order to give the Mayflower more room, she put her wheel astarboard, and at the time of the collision hereinafter mentioned was nearly or quite at a stand-still.

2 Fifth. That, notwithstanding all the efforts possible on the part of the officers and crew of the Dove to avoid said collision, the said Mayflower came down upon said Dove, striking her on her port bow, and causing such damage that the boat was in immediate danger of sinking, and in order to save said boat and cargo from sinking in deep water, and to save the lives of the passengers and crew, it was necessary to run her into the shore, and there being better shore in Canada, and the force and momentum of the collision having turned the bow of the Dove towards the Canada shore, she was immediately stranded, and at once filled with water and sunk.

Sixth. And libelant claims that said Mayflower her officers and

crew, were in fault in the following particulars, among others: That she had incompetent and insufficient officers and crew, not properly stationed, and not carefully attending to their duties; that she was proceeding at too great speed; that she neither gave the proper fog-signals, nor gave nor answered the proper passing signals; that she did not properly alter her course or check or stop her headway, or take any other or proper measures to avoid said collision; that there were other errors, faults, and wrong-doings on the part of said Mayflower, her officers and crew, not known to this libelant, but, when discovered, he prays may be inserted herein with apt and proper words to charge said defendants.

Seventh. That, by reason of said collision, the cargo and baggage on board of said Dove, and in possession of said libelant, was damaged, as near as can be ascertained, in about the sum of $800. Also the ship-stores and furniture were greatly damaged, and said libelant was obliged to expend large sums of money in raising and towing said Dove into Detroit for necessary repairs, and also is now expending, and will be obliged to expend, other large sums of money in making necessary repairs, in all, as near as can be estimated for said enumerated items, the further sum of about eleven thousand dollars. That said Dove has been and will be necessarily delayed in getting her up into the port of repairs, and making said repairs, for the space of about thirty days, and that during said thirty days said boat would earn, was worth to said libelant in his business, and would charter, for the sum of about $225 per day, and that said libelant was, and will be, obliged to pay large sums of money for the expenses and board of the crew of said Dove, and that the total of said damage and expenses will be about the sum of $6,750.

3 That the total of said damage, as near as can be ascertained, amount in all to the sum of $18,550 *dollars*, for which, with interest from date, your libelant claims to have a lien upon said vessel, enforceable in this honorable court.

Eighth. That the aforesaid collision and damages was occasioned solely by the negligence, unskillfulness, and carelessness of the persons navigating the said propeller Mayflower, and not by or through any fault, negligence, or improper conduct on the part of your libelant's said vessel, her master, or crew. That, since the aforesaid your libelant ha applied, in a friendly manner, to the owner of the said and requested to settle for the damages sustained by your libelant, as above mentioned but the said owner refused to pay the said or any part thereof.

Ninth. That all and singular the premises are true, and that the said propeller Mayflower is now lying at the port of and is within the admiralty jurisdiction of the admiralty courts.

Wherefore your libelant pray that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Mayflower, boats, tackle, apparel, and furniture; and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court will be pleased to decree the payment of the damages aforesaid, with costs; and that the said vessel may be condemned and sold to pay the same; and that your libelant may have such other and further relief as in law and justice they are entitled to receive.

The River and Lake Shore Steamboat Line,
Per JOHN A. SLOAN,
Agt.

Libelants' Proctor.

4 EASTERN DISTRICT OF MICHIGAN, *ss*:

Be it remembered, that on this seventeenth day of June, A. D. 1869, before me, at Detroit, Michigan, personally appeared John A. Sloan, master of the said steamer Dove, and was at the time of the collision in charge thereof, and made solemn oath that he ha heard read the foregoing libel, and knows the contents thereof, and that the same is true as to his own knowledge, except as to those matters and things stated to be on information and belief, and as to these matters and things he believes it to be true.

JNO. WINDER,
U. States Commissioner for the Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss*:

On reading and filing the foregoing libel, for sufficient cause therein appearing, and on motion of libelants' proctor, it is ordered that an attachment do issue for the seizure of the said boats, etc., and that the day of hearing be fixed for the Tuesday of at 10 o'clock a. m., if that be a day of jurisdiction; if not, on the next day of jurisdiction thereafter, at which time said process be made returnable.

Dated , 18 .

District Judge.

(Endorsed:) No. . District court of the United States for the eastern district of Michigan, in admiralty. The River & Lake Shore Steamboat Line vs. Propeller Mayflower, her engines, boats, tackle, apparel, and furniture. Libel for collision. Damages, $18,550. Filed in clerk's office, June 17, 1869. W. D. Wilkins, dep. clerk. Attachment issued, returnable first Tuesday of July, 1869. Newberry, Pond & Brown, libelant's proctors.

5 *Attachment.*

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

[SEAL.] The President of the United States of America to the marshal of the eastern district of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United States for the eastern district of Michigan, on the seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by the River and Lake Shore Steamboat Line, owners of the steamer Dove, against the propeller Mayflower & her engine, boats, &c., claiming that there is due them for damages sustained by said Dove on occasion of her having been run into and sunk by said Mayflower, on May 31st, 1869, in St. Clair River, eighteen thousand five hundred and fifty dollars, ($18,550.00,) for the reasons and causes in the said libel alleged and mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said propeller or vessel, her tackle, etc., may be cited in general and special to answer the premises, and that all proceedings being had, *that* the said propeller or vessel, her tackle, etc., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are, therefore, hereby commanded to attach the said propeller Mayflower or vessel, her boats, tackle, etc., and to detain the same in your custody until the further order of the said court respecting the

same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel; that they be and appear before the said court, to be held in and for the eastern district of Michigan, on the first Tuesday of July, 1869, next, at ten o'clock of the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable John W. Longyear, judge of the district court of the United States for the eastern district of Michigan, at the district-court room, in the city of Detroit, in the said district, this seventeenth day of June, 1869, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

JNO. WINDER, *Clerk.*
By WM. D. WILKINS,
Dep. Clerk.

6 EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that, by virtue of the within writ, I did, on the 22d day of June, A. D. 1869, seize the within-named propeller Mayflower, her engine, boats, tackle, apparel, and furniture, and now have the same in my custody to await the further order of the court in the premises.

JOSEPH R. BENNET,
Marshal.
By T. W. RAY, *Deputy.*

Service, 2.00; miles, 06—$2.06.
Paid for tug in making seizure, . Ship-keeper on board from , at $ per day.

(Indorsed:) Exb. 35, No. 1235. District court of the United States for the eastern district of Michigan. In admiralty. Attachment. The River & Lake Shore Steamboat Line, owners steamer Dove, *vs.* Propeller Mayflower, her engine, boats, &c. Returnable 1st Tuesday of July, 1869. Returned and filed June 23d, 1869. Wm. D. Wilkins, dy. clerk. Newberry, Pond & Brown, libellant's proctors.

7 In admiralty.

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

On this seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, before me, Wm. D. Wilkins, a commissioner duly appointed and empowered to take acknowledgments of bail, affidavits, and depositions, etc., within the eastern district of Michigan, in the matter of the libel and claim of the River and Lake Shore Steamboat Line, owners of the steamboat Dove, against the propeller Mayflower, on her engine, machinery, boats, &c., in a cause of collision, civil and maritime, moved and prosecuted in the district court of the United States for the district aforesaid.

Which day personally appeared H. Norton Strong as claimant of the said propeller Mayflower and her engine, boats, &c., and produced for suret' N. W. Brooks, of Detroit, in said district; and the said H. Norton Strong

and N. W. Brooks, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of thirty-seven thousand one hundred ($37,100) dollars, unto the said River and Lake Shore Steamboat Line, libellant, that the said H. Norton Strong shall abide and answer the decree of the said court in the aforesaid cause; and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, whereever the same may be found, to the value of the same above mentioned.

H. NORTON STRONG.
N. W. BROOKS.

Taken and acknowledged this 17th day of June, A. D. 1869, before me,
WM. D. WILKINS,
U. S. Commissioner, 6th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

For the purposes of the suit referred to in the above bond, it is now stipulated and agreed by and between us, as parties thereto, that the cash value of the said above referred to, is the sum of dollars.

Dated Detroit, , 187 .

H. N. STRONG.

8 EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally , and made oath that worth the sum of of lawful money of the United States of America, after payment of just debts, in real estate, subject to execution, within the eastern district of Michigan.

On the day of A. D. 187 , the said sworn to the truth of the above attestation, before me, , U. S. commissioner, 6th circuit and eastern district of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby approve of the within bond, and of the sureties therein named, as sufficient.

Given under my hand at Detroit, in said district, this day of , 18 .

U. S. District Judge of Michigan.

(Indorsed:) No. 1235. District court of the United States for the eastern district of Michigan. In admiralty. Stipulation to answer judgment. River and Lake Shore Steamboat Line vs. Propeller Mayflower, her engine, machinery, &c. Bond in $37,100. N. W. Brooks, surety. Taken, acknowledged, and filed June 17, 1869. Wm. D. Wilkins, dep. clerk.

9 *Claim & answer.*

United States district court, eastern district of Michigan.

THE RIVER AND LAKE SHORE STEAMBOAT LINE
vs.
THE STEAM-PROPELLER MAYFLOWER. } In admiralty.

The claim and answer of H. Norton Strong, of Detroit:

And thereupon said respondent says that he is the sole, true, and

bona-fide owner of said propeller Mayflower, and he hereby claims the same.

First. And for answer to the first article of said libel, respondent saith that he admits the same.

Second. And for answer to the second article of said libel, respondent saith that he denies the same and every part thereof, except those portions thereof which state the voyage on which said steamer Dove was engaged, and that the night was foggy.

Third. And for answer to the third article of said libel, the said respondent denies the same, except the allegation that the Mayflower was running down the St. Clair River.

Fourth. And for answer to the fourth article of said libel, respondent says that he denies the same.

10 Fifth. And for answer to the fifth article of said libel, respondent says that he denies the same, except the statement of the fact that the Mayflower struck the Dove, and that the latter was in danger of sinking, and did sink on the Canadian side.

Sixth. And for answer to the sixth article of said libel, respondent denies the same and every part thereof.

Seventh. And for answer to the seventh article of said libel, respondent says that he denies the same as stated, and saith that the items of damage set forth were very greatly less than the amount alleged, and that the same are overstated, with a view oppressively to subject respondent to give security to a large amount, in order to obtain the release of said Mayflower from process.

Eight'. And for answer to the eighth and ninth articles of said libel, respondent denies the same, and alleges that the said collision was occasioned solely by the negligence, unskillfulness, and carelessness of the persons navigating the said steamer Dove, whereby great danger was done to said propeller Mayflower, the first amount of which he will proceed to recover by cross libel, and that said collision did not

11 occur through any fault, negligence, or improper conduct on the part of the respondent's said propeller, her officers, or crew.

Whereupon respondent prays that said libel may be dismissed with costs.

H. N. STRONG,
Claimant and Respondent.

ALFRED RUSSEL,
Proctor and of Counsel for Respondent.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Be it remembered that on this twenty-second day of June, A. D. 1869, before me, at Detroit, Michigan, personally appeared the within-named H. Norton Strong, owner of the said propeller Mayflower, and made solemn oath that he has heard read the foregoing claim and answer, and knows the contents thereof, and that the same is as to his own knowledge, except as to those matters and things stated to be on information and belief, and as to these matters and things he believes it to be, true.

WM. D. WILKINS,
United States Commissioner for the Eastern District of Michigan.

12 (Answer:) District court east. dist. of Michigan. In admiralty. River and Lake-Shore Steamboat Line vs. Propeller Mayflower, Engines, &c. Claim and answer. June 22nd, 1869. Wm. D. Wilkins, dep. clerk. A. Russel, respondts. atty.

13 TESTIMONY.

Testimony of Albert A. Robinson.

ALBERT H. ROBINSON, being duly sworn, testifies as follows:

Am 26 years old. Live in Detroit. Am a sailor. Have sailed off and on for seven years as lookout-man and as wheelsman and watchman. I was on the Dove at the time of her collision with the Mayflower, as wheelsman. I went on watch at Algonac about nine o'clock. It was Captain Sloan's watch. During my watch Captain Sloan was on top of the pilot-house, after leaving Algonac, all the time. The weather was thick, occasionally it would break away. After leaving Algonac we stopped next at Marine City, stopped there probably quarter or half an hour. After leaving Marine City it broke away so we could see the Canadian shore quite plain. We followed the docks along the American side up as far as the "Old Mill dock." Then the weather thickened up again. Captain Sloan then asked me how I was heading, (objection is here made by opposite proctor to any statement of conversation between wheels-man or officers, except orders;) I answered him "North;" he told me to keep her so; she was heading then north. I did keep her so, or as near as I could. I think that is pretty near. I think that at this time we were running slow. We were sounding our whistle, two blasts at a time and not more than a minute apart. I kept her on this course north until I heard a conversation between the captain and lookouts-man, (Henry Donaldson,) both being on the pilot-house. One of them said "What is that?" (Any evidence of conversations on the boat, except orders, is here objected to by opposing proctor.) I think one of them, (can't tell which,) said "I think it is the shore." The bells were rung then to "check her" and to "stop." I then got an order to port my wheel. After stopping, and after I'd ported my wheel, the captain sung out to "steady," and we went ahead.

I had steadied her one point, and after he'd sung out "steady,"
14 we were heading N. by E. Cannot say whether the captain rung the bell for "all right" or not. If he didn't, she was running slow. I did not see the American shore at the time I ported my wheel; there was a light in the pilot-house, and when there is a light there you cannot see outside very well for any distance. I steered N. by E. until I made a bright light. It bore from where I stood very little on our port bow. Cannot tell how far it was off, not a great ways. After seeing that light (we were then blowing two whistles) we heard two whistles, and then the next thing the propeller loomed right up and was on top of us. When we saw this bright light we were heading N. by E. We had kept that course from the time we ported until we saw the light. From the place we ported, our course N. by E. that night would have taken us very near Ricard's dock, if not on to the dock; that was my opinion when I was in the pilot-house that night; from the time I made the light up to the collision the following orders were given: as soon as I saw the light the propeller loomed right up on to us, and Captain Sloan ordered me to port my helm and ease her away. The propeller was right on to us then. Under that order I don't think I got the wheel over two or three spokes, or a quarter of a turn to port, before the vessels struck; I don't think the Dove swung much under this order. We were running very slow. She may have swung a little. At the time I saw the light I think we were heading very near on to Ricard's dock, or on to the shore.

I think after we saw the light that the bell was rung to "stop" and

"back;" cannot tell how long this was before the collision, because just as soon as we saw the propellor she was right on to us. The engine I think was stopped and reversed before the collison. Having stearage-way, we were running slowly before the bells rang. After they rang, the Dove had very little if any headway.

When the vessels came together the propeller cut us very near in two forward, striking a glancing blow and backing us off toward the Canada shore.

Ques. When you first saw the Mayflower light how did it approach you, as to being head on or across your bows?

15 Ans. It seemed to be on our port-bow as it came up. I was standing on the port side of the wheel.

Ques. State whether it changed its bearing or not from the time you first saw it until the time of the collision, or came straight at you?

Ans. From the time I first saw the light until the collision the time was so short I could not tell.

Ques. Whereabouts in the river did the collison occur?

Ans. Just below, or very near abreast of, Ricard's dock; I think a little below. It was on the American shore.

Ques. Where did you fetch up after the collision, and about how long after?

Ans. We fetched up on the Canadian shore; I cannot tell how long after we got clear from the propeller. The stearing-gear of our vessel was all in good condition. There were two lookouts on duty at the time, one on top of the pilot-house and the other in front of it. Henry Campbell was on the lookout in front of the pilot-house. I saw our lights after we were struck. The colored lights were all right. The bright light was knocked out by the collision. I saw the Mayflower's green light after she struck us and while alongside of us; did not see it until after she struck us and got clear of us, and then as she came past us again I saw the green light on her starboard side. I remained at the wheel after the collision, until Captain Sloan sung out the boat was on fire. I then jumped out, on Captain Sloan's order, to clear away the boats, and ran aft and cleared away the boat, (the boat was stopped then,) and then ran back to the pilot-house, (when the bell rung to go ahead,) and took the wheel again. After I returned to the wheel Captain Sloan sung out "hard a starboard." I kept it so. He asked me two or three times whether it was hard a starboard. I told him it was. The effect as to steering our vessel, after the collision, was, I think by the water rushing into her broken bow, to swing her around to starboard. When we struck the channel-bank on the Canada side I cannot say how we were heading as to the shore.

16 Cross examined:

I had been on the Dove a month the preceding season, and that season from April 23d to the time the collision, and have continued employed on her until now. I am now "lookout man" on her; I was made "lookout" after the Dove came out of the dry dock.

Henry Donaldson was the "lookout" on the pilot-house. He was there with the captain during the whole time. I know we were steering north by the compass; when I say I think we were running slow, I think so because we do generally run slow in thick weather. I know of no particular reason for thinking so, except our general custom to run slow in thick weather.

I can hear the engine-bells distinctly in the pilot-house, when a door of the engine room is open, and then I can hear the jerk at the bell-cord

when it is pulled. When I here speak of the ringing of the bell, I speak from actually hearing of the sound. When I checked and stopped before we got the order to port, I cannot tell whether the Dove had actually touched bottom. My opinion is that she was pretty close in, though I don't think the Dove's head went near the bank. My opinion is that I don't know whether she touched or not. Don't know what Captain Sloan may have seen to induce him to back if he did so back. My opinion at the time was that he had probably seen something abreast of him if not dead ahead. I also thought that he feared he was too close in shore, and stopped her or hauled out a little to avoid running aground, as any man would.

We had been heading "north," which leads us in shore; cannot say whether the boat was actually moving back when he rung the bells to back, and before I ported. From the pilot-house I couldn't tell if she was backing or going ahead. The captain may have rung the "all right" bell for all I know; the engine of the Dove was actually stopped. I heard a bell ring to "go ahead," and she did go ahead on her course.

17 I signed the protest in this case. I didn't have anything to say in the protest. I was sworn to it, but it was read to me and I signed it. There was no question asked. Captain Sloan delivered the protest to some man who read it to me.

I was asked if such things had taken place, and I told them yes.

I saw no colored light on the Mayflower before the collision. I heard one double whistle on the Mayflower before the collision, one blast of two whistles. As soon as this was given the propeller was on to us. We were blowing our whistle right along.

The Mayflower struck us on our port side, and carried away about 10 feet forward, cutting us nearly in two. Didn't see either of her colored lights until she came alongside of us after we had got clear of each other. When she loomed up and came on top of us I only saw her bright light.

Don't know as I had a conversation on shore with Henry Donaldson after the collision. Suppose we talked about it, of course, the same as any other man would do. Do not remember what I said to him in regard to the cause of the collision.

I heard them on the deck of the Mayflower halloo, as we were coming together, "O! the Dove! the Dove!" or something to that effect. Think I heard such as this: "O! Jesus Christ! the Dove! the Dove! back her, back her!" That is as near as I could get at it.

Don't know as any one conversed with me particularly about my testimony. Mr. Gallagher said I'd be called on to give testimony in the case. No one else particularly. I made my statement of my testimony once in Mr. Wm. A. Moore's office. That is the only written statement I have given. Capt. Sloan was present when I gave this statement. When Gallagher said my statement would be needed, it was in St. Clair River. Henry Campbell, and I think Donaldson, were present. Capt. Gardner was not present. I have had no conversation with Gardner in regard to my statement, which I made in Mr. Moore's office, or in regard to what I would swear to if I was called on.

18 At the time of the collision we were nearest the American bank. I did not see it. Knew we were nearest that shore because we were very near on to it when Capt. Sloan stopped her, and also knew the course we were steering. Judged from these two reasons. We sank on the Canada side. We started for the Canada shore, and after the boat was headed around we pointed her for that shore.

Ques. What reason existed for your going to the Canada shore, if you were nearest the American shore when you were struck?

Ans. In the first place it was not my business to know. I was working under the captain's orders.

There was no one else on the pilot-house that I know of besides Sloan and Donaldson. Tom Denman was there before we got to Marine City. He got off there.

ALBERT H. ROBINSON.

Nov. 13, 1869.

Testimony of Joseph M. Hubbard.

I reside in Port Huron. Have followed sailing for some years. I have sailed, off and on, for fifteen years, perhaps more, on the lakes between Buffalo and Chicago. I have been master of six different boats, and for seven seasons. I went on the Dove at Detroit, bound for Port Huron, on the trip of the collision with the Mayflower, as a passenger. I had come down with a raft, and there were six or seven raftsmen returning with me. I remember stopping at Marine City; we stopped there 15 or 20 minutes, I should judge. The weather had cleared up then and looked better than it had at any time coming up the river. When it cleared up Sloan started out; don't know as we stopped on account of the weather. When we started out I was on the port side of the Dove, near the pilot-house. Think I went in soon after we got under way, and after passing the propeller which lay at the wood dock above the mill. We ran a good distance along the docks on the American side. Judged about 200 feet from the shore. Think I know all the bank
19 and docks and every shoal on the St. Clair River. Have most always sailed through the river ever since I have sailed a boat. I went inside to lay down on the floor, and was either lying or sitting down. After leaving Marine City the Dove gave two blasts of the whistle every few minutes all the way up. The whistle I am satisfied was sounded all the law could require her to. After leaving Marine City the steamer was not driven fast. I think that she was under a check, and that they were not crowding her at all.

I came out on deck every few minutes after leaving Marine City. I came out to see how the weather was. Was in the cabin when Capt. Sloan stopped the boat, and I went out to see what the trouble was. I found that the Dove was under check, and on enquiring they told me the reason was that they were near the shore. Mr. Kimball came out with me, or was out there when I came out. I came out of the cabin on the port side; should think we were then near 80 rods below Ricard's Dock. I calculated then we were on a shoal which I knew was below the dock. I remained out on deck until the collision occurred. I think the Dove was running under a check from the time I came out on deck. I heard two blasts of the Dove's when I was out there on deck. While standing there I heard two blasts of a whistle from another boat. After hearing them, the first I saw was a bright light. I was then standing close by the pilot-house, on the port side. This bright light seemed to be a little on the port bow, in reference to the stem of the Dove. After I saw this bright light I do not think Capt. Sloan blowed a whistle or that a whistle sounded from either boat. After seeing the light the next I saw was the propeller coming right up on to us out of the fog. I cannot say how far she was. She might have been 6 to 10 rods distant. Saw the propeller's hull in reference to the stem of the Dove about the same place as when I saw her light. As soon as I saw the propeller I went to the cabin-door and halloed "collision," and then went aft where I knew there was a big yawl-boat. After I saw the propeller's

light I heard Captain Sloan's bells ringing. Cannot tell what
20 these signals were. Thought she was backing. I got down to our yawl-boat which was towing astern, and found it way under the quarter; where it would not have been if the Dove had had headway on her. Our yawl-boat had been towing astern by a line about 15 feet from the Dove's stern; from what I saw I think the Dove had sternway at the time of the collision. The collision occurred at half past eleven. Should judge we were close to the American shore at the time. Could not say how far from the shore. I and Kimball got into our yawl as we were crossing the river; think Mr. Cummings may have got in also. Just as soon as we could get clear from the propeller (probably two or three minutes) the Dove started ahead again, and I think we were running six to eight minutes after she then started before we got on to the Canadian shore. Just before the collision, Kimball remarked about seeing trees and buildings on the American shore, and I looked and said "yes," but was more interested at the time with the propeller coming down on us.

Cross-examined:

Reside in Port Huron. It wasn't clear when we left Marine City, but was more favorable than it had been before. Should think we could have got along very well as far as the weather was concerned, but do not think the Dove was going her average speed after leaving Marine City. After leaving Marine City, and before reaching the shoal below the dock, where we came near grounding, I will not be positive whether I heard any signals of her bell or not. I have never sailed as a navigator on any steam-craft. Have often been a passenger; made one trip in charge of a steam-craft on the lake-shore after a load of hoops. Three taps of the bell indicate to "check," two taps indicate to "back." Can't say whether the Dove carries a gong or a bell. Cannot say if the Dove actually touched bottom on the shoal. I knew there was a flat running out there. There are no woods close to it that would keep you off there. While on or
21 near this shoal I didn't see anything of trees or anything on shore, but calculated on my own judgment we were on that shoal. I do not know at all as the Dove backed from the shoal. Cannot say whether I heard any signals to back. Think she went along and sheared off. Cannot say how much of a sheer she took. Can't say in what part of the river she was when she straightened after the sheer. Think she must have been close in. When I saw bright light I was a little to the left of pilot-house on port side. I was on the deck on which the cabin opens out. Believe it is called the promenade-deck.

I saw no colored lights that I can remember of at any time. Right after I saw the bright light I saw the hull of the propeller. It was a short time; it might have been one, or two, or three minutes. A very short time. Did not see the lead heaved. I heard Capt. Sloan say that he thought that that fellow must be lying at Ricard's dock. I suppose he meant the propeller that blew the whistle. He didn't say this to me, but I suppose to some one on the pilot-house with him. This was after I heard the double whistle; cannot say whether it was when we first saw the light or before we saw it. But I know Sloan's remark was after we had heard the propeller's whistle. Cannot say what order Sloan gave when he made this remark. I heard no order, nor did I observe any change in the Dove's course. After the light became visible I don't remember hearing any whistle from either vessel. After the propeller whistled the Dove gave one or two whistles and I heard no answer made. I heard no order on the Dove after I saw the light that I know

of. The propeller was five to ten rods off when I first saw her. The course of the Dove was not changed that I know of, from the time I first heard the whistle of the propeller until the collision. I could hear Capt. Sloan sometimes. He might have given orders which I did not hear. When the two boats came together I was somewhere near the stern. Had not looked at my yawl-boat at that time. The stroke of the propeller might have had a tendency to have helped the Dove backward and so have caused our yawl to get under her quarter. I know the Dove was going back strong when I got to the yawl-boat. The fact that the yawl was under the Dove's quarter, and the position of the yawl-
22 boat, stuck under the Dove's quarter, was the only reason which makes me think that the Dove was under sternway at the time.

Redirect examination:

Should think the propeller was running at a good speed when she came up to us. Can't tell whether she was checked or not, but think she was coming at a pretty good jog. Saw no colored lights on her until I saw the hull of the propeller, but only her bright light. The propeller might have been twice her length off, or perhaps further, when I saw her hull. She was close in upon us.

Cannot say how the Dove struck the Canada shore, but from the appearance of the marks on the bank of the Canada side the next morning, I judged she was going very nearly head on, but a little down stream if anything. Noticed Dove's lights coming up the river before the collision. They were then all right; and were all right after the collision, except the bright light.

Recross-examination:

The blow of the collision gave me a little jar. It did not throw me down; I might have staggered a little.

JOSEPH M. HUBBARD.

Testimony of George Kimball.

Am twenty-eight years old. Live at Port Huron, Mich., eight miles therefrom. I am a raftsman; have been in such employ about five summers; from Port Huron to Detroit for last three seasons.

I was on steamer Dove at the time of the collision with propeller Mayflower. We were towing behind said steamer a yawl-boat of ours.

23 When the Dove left Marine City I was standing on the promenade-deck outside. I went into the cabin when she was somewhere along by the old mill-dock. She passed pretty close in to this dock. I went in and laid down on the floor; did not go to sleep. Cannot say how long I laid there. I went out at the time they thought she touched the bottom. Cannot say if the engines stopped or not, but am quite sure the boat was stopped. Heard Hubbard ask some one what was the matter, and the reply was they thought she had touched bottom. I could not see the land at this time, but I saw it on the American side a few minutes afterwards. I thought I saw buildings and some trees. After leaving Marine City the Dove blowed two blasts of her whistle quite frequently. Our boat seemed to be going slow at the time. I cannot say that I heard the propeller whistle at all. I remained outside from after we touched until the collision. I stood with my back against the pilot-house and on the port side. I could see forward. The first I saw of the Mayflower was a bright light a little on the port bow of us.

I cannot guess how far it seemed to be off. Don't think it was a great ways off, but would have to guess at the distance, and cannot even do that. It was then foggy, having thickened up; much thicker than when we left Marine City. I saw no colored lights on the propeller as she came up to us. When I saw the propeller's hull she was pretty close, for in almost an instant she was on top of us, and struck us. It must have been a very short distance. After I saw the light she seemed to be under pretty good headway, going pretty strong. I heard bells rung on the Dove after seeing the propellor and before the collision. I am quite sure the Dove's engine was stopped, I think reversed, before the collision. The bell was rung to stop and back but a short time before the collision. They hadn't much time to do it. Captain Sloan, all the time I was on the deck, was upon the pilot-house; after the propeller's light was first seen, I don't think it changed its position any; cannot say I heard a hail from either vessel.

24 Am generally familiar with the river near Ricard's dock. I think the collision took place a little below Ricard's dock. I think I could see the buildings there. Mr. Hubbard was with me alongside of the pilot-house. There was a lookout forward on the same deck. I heard some one, either this man or a man on the pilot-house with the captain, speak to him and ask him if he saw the light.

We had been running up pretty close to the American shore. We were not out in the center of the river. Just before the vessel struck I started and ran back and had got as far as the paddle-box when I stopped. I went on to our yawl-boat after that. Hubbard was trying to pull the yawl out from under the Dove's quarter when I got there, but had not got into it. The yawl was under the starboard quarter; cannot say how much it had got under the quarter.

The collision turned the Dove toward the Canada shore. I thought at the time she struck the Canada shore a little down and quartering, but do not know for certain. I thought then we were running in the neighborhood of ten minutes before we struck, but don't know if it was as long as that. Much longer than it would have taken us to have run the whole width of the river, if we had been in good condition. She struck on the channel-bank and not on the shore. We were as far from the Canada shore, when we stopped, as we were from the other shore when we had the collision.

Cross-examined:

My home is eight miles from Port Huron. Had been a passenger on the Dove before, several times during the summer. Never was acquainted with Sloan until after the collision. Never saw him until I was passenger on the Dove. I took passage that night at Detroit. I had lain down in the cabin, at intervals on the trip, for a few minutes, and then had got up again. Hubbard and I and four others were returning home together; didn't go out after leaving Marine City, until the boat ran aground. At the time I went out I cannot tell what passed between Captain Sloan and the wheelsman. After we got off the shoal I cannot say whether our course up the river was further out or closer in than when we got on the shoal.

25 Can't say what time of night it was when we touched bottom. It was somewhere in the neighborhood of eleven o'clock, I should judge; cannot tell how long after we touched bottom the collision occurred. Do not think it was one half hour, but cannot say positively. I remained on deck from the time we touched bottom until the time of the collision. I remained up because I couldn't sleep, and Hubbard was

talking about there being danger of a collision because it was foggy, and I was laughing at him because I thought he was timid.

When we left the shoal I could see no lights visible anywhere; cannot say how long it was after getting off the shoal that I saw the Mayflower's light, which was all the light I saw.

I cannot say I heard any whistle from the propeller at all. I wasn't excited, for I didn't think there was any danger. After I went out, and up to the time of the collision, I stood by the pilot-house, with my back leaning against it. Cannot say that I heard Capt. Sloan pass any orders to the wheelsman. Heard Sloan speak about the light when one of the lookouts spoke to him about it. The man asked him if he saw that light. He replied that he did. I don't know what else Sloan said after that; think he gave his opinion as to what the light was, but cannot state positively what he did say. Think he told the man that he thought "*he*" was lying at Ricard's dock; that was all I heard from any one in regard to that light. From where I stood I could have seen the wheelsman if I had looked that way, but I stood with my back towards him. I have never sailed, and am not familiar with navigation. I can give no opinion as to the time which passed between the time I saw the light and the collision.

I supposed this light was a boat-light when I saw it. I didn't think anything about whether it was still or in motion when I saw it. I made up my mind about the time she struck that it was in motion. When I saw the hull of the boat, I concluded the light was in motion then.

Just before the collision, I was sure I could see objects on the American shore. The fog was in streaks all the time. The force of the
26 blow caused me to stagger. I heard nothing said in regard to the probability or likelihood of a collision by any of the officers of the boat. Heard no exclamation or hailing from either of the boats before the collision. I heard the Dove's bell ring just before the collision, and after I saw the hull of the propeller. I think I first heard three taps of the bell, and then two taps afterwards. I don't know anything about running steamboats, but that's what I heard then. But I heard no order from the captain. I did not hear a single stroke of the bell.

I was first called on in reference to giving testimony at Mr. Newberry's office; don't remember the precise date—a considerable time after the collision. Capt. Sloan asked me, when I was down here on a raft, to go up to Newberry's office. I then gave my written statement to Mr. Newberry. He did not tell me what he wanted me to prove, but asked me what I knew about it, and I told him. He did not read me the statement of any other person. Mr. Sloan and Mr. Cummings, (the man I work for,) and perhaps Mr. Hubbard also were present in the office besides Mr. Newberry. I don't know as there was any difference between Sloan, Hubbard, and I as to what took place. Didn't hear Sloan say much about it. Newberry asked me questions, and I answered him.

Redirect examination:

I did not pay particular attention to the ringing of the bells any way. There was no question asked me over at Newberry's office about the facts of the collision except by Mr. Newberry.

GEORGE KIMBALL.

NOVEMBER 13, 1869. 1869.

Testimony of William H. Dana.

I reside in Detroit. I was this spring employed on the steamer Dove as 2d engineer, and was so employed on the trip when she had the

27 collision with the propeller Mayflower, in the St. Clair River. I am about 30 years old. Have sailed since 1855, in almost every capacity, from cook upwards, including that of master. Have sailed as engineer about seven years. It was not my watch at the time of the collision. I turned in pretty near 10 and 11 p. m., the Dove being then at Marine City. I turned in while she was at the dock. I wasn't sound asleep—was probably "dozing." After turning in, heard the whistle blowing frequently—double whistles, I think. The next thing I heard was the bell ring to stop, and then right off to "back," the bells being closer together than they usually come. I was in bed in my room, on the main deck, close abreast of the engine-room. I next heard (after stopping and backing) men running aft singing out, "Back her strong." I didn't hear any bell at that time. She was backing. They had got the bells before that. Besides the stop and back bell they had got before that, the "jingle" bell to "back her strong." After hearing the bell to back her strong, I raised up in bed, and when the men ran aft crying out to back her strong, I jumped up and got out of bed, felt for my boots, and then came the collision. I went out of my room, and ran aft to the port quarter to look to see where we were. Went to the aft port gangway. I then saw the shore and a light in a house. It was somewhere in the neighborhood of 200 feet distant. The light was upstairs in a house. I was at the port gangway about half a minute after they struck, just as soon as I could go there, and I went right lively, without stopping to put on my boots. I looked to see where we were, then put on my boots and went to the engine-room, and asked the fireman if the boat was making water. He said the water was up to the grate-bars. The captain then came down, and ordered on the bilge-injection. I went down and put it on. This took me probably two minutes or so; then came up and stood around a minute or so; then went up and told the captain the water was gaining on us. He said he was running right for shore. She was then running for shore. We were probably four or five minutes or more after I came out before we struck shore. The engine
28 worked right along until she grounded, and worked after we did ground. The engine that night was in very good condition, as good as it ever was. I lived in Detroit for the last two or three years, but my folks live at Algonac, about eight miles below place of collision; and for seven or eight years I lived about six miles below place of collision. I had lived on St. Clair River, in that neighborhood, since 1853, until I came to Detroit, some three years ago. I am very familiar with the river and localities at place of collision, and know it and all the points of land from Port Huron down, that I can tell them the moment that I put my eye on them.

The American shore was nearest the place of collision. I know this because I saw the American shore, and know the river well enough to know when I am nearest to either shore.

The Dove's engine reverses easily; you can reverse it in almost a second. It reverses stronger than it goes ahead.

Cross-examined:

Didn't get out of bed when I first heard the bell, because I thought I'd wait to see what was the matter. Our "jingle" is the main bell. We ring four bells on it for a "jingle." We have no separate "jingler." I know from the sensation of the collision that the boat was struck forward of the engine.

Ques. If you knew she was struck forward, why did you not run forward to see how serious the accident was?

Ans. I know of no reason except I saw the rest of them running aft, and I ran with them. It was light aft and I saw no light forward. They were all blown out on deck.

Ques. Did you not state in your direct examination that you ran aft for the purpose of finding out where the boat was?

Ans. Yes, I did.

Ques. How do you know the light you saw in the house was in the second story?

Ans. Because it was up so high you could see the roof of the house; there was not a great deal of fog when I got down aft; it would come and go.

29 Ques. Was the house directly on the bank?

Ans. No sir.

Ques. How far from the bank do you judge the house was?

Ans. About one hundred feet from the bank, and may be more.

Ques. How far could you see a white light at that time?

Ans. I don't know. I saw that pretty plain. I did not look any further.

Ques. With the slight amount of fog existing when you got on deck, how far do you think you could see a colored light?

Ans. Two or three hundred feet, or perhaps farther. I do not think I had been asleep after I went to bed. I might have been in bed half an hour, or perhaps three-quarters, before the collision took place.

Ques. What would be the effect of the blow on the Dove's port bow, on the heading of the boat?

Ans. It would deflect her a point or a point and a half. Perhaps too points.

Ques. How long after the collision was she headed toward the Canadian shore?

Ans. The minute the boat struck us she swung us around that way. Probably a minute. I don't think it was so long.

Ques. Did you hear the master give any order after the collision to the wheelsman?

Ans. No, sir. Judge the collision took place three or four miles above Marine City. Don't know whose house I saw on shore with the lights in it. Think it was Westbrook's house.

Ques. Was the gable end of the house toward the stream?

Ans. Am not certain, for I did not take notice, and I have never noticed the house since the collision, and don't know the folks along there. Am sure it was a white house. I saw a wood-colored house this side of it. Didn't know how many chimneys were visible on the white house. Could tell it was a house and not a barn, because I know

30 the houses there. Can tell a house from a barn, even if there is no chimney on it, because I have lived in both.

Ques. What is the nature of the shore in front of that house, and how far is the channel-bank from the water's edge?

Ans. It is low land. The channel is probably 40 feet from water's edge along there for a mile or so, and in some places it is less.

Ques. Is the shore sand-bank or marsh?

Ans. In some places marsh, and in some places sand-bank.

Ques. Was the fog thicker on the water or above the water?

Ans. It would change. When I went to the gangway and looked, it was thicker next the water. There was not much difference. Can't tell exactly how high the fog-bank would rise above the water. I could see the water and see above the water. It wasn't very thick when I was looking towards the shore.

The top of the pilot-house is higher by seven or eight feet from the place where I was standing, looking out for the light.

Ques. In view of the nature of the shore, as you have described it, and of your extreme nearness to the shore, as you have testified, are you able to suggest any reason why the boat was not run upon the American instead of the Canadian shore?

Ans. Yes. Because the Mayflower's blow turned us round toward the Canadian shore, and, our bow being all knocked in on the starboard side, she wouldn't mind the helm.

Ques. As you were so very near to the shore, and as you testify your engine worked stronger backwards, what difficulty was there in backing on to the American shore?

Ans. The captain should answer that. I suppose his reason was that by running her on the Canadian shore he could more easily stop the hole up and could keep her from sinking.

Ques. What is the length of the Dove?

Ans. I do not know her length—from 190 to 200 feet. I think about 200 feet.

31 Ques. Will the boat steer going backward?

Ans. You can back her for a mile or two, but will have to stop her every now and then to shift your helm. You cannot back her right along or steer her. There is no difficulty in backing her length. You cannot back her and handle her several times her length unless you stop and shift her helm. The wind would also have a good deal of effect on her course when backing.

I first made my statement in regard to the collision about a week or so after it happened. Was called upon to do so by Captain Sloan. I made it at Mr. Moore's office. All hands were there—that is, the men who made statements—first engineer, wheelsman, lookout, and Captain Sloan.

I think the Dove can be backed from her dock to the Central depot without changing her helm, when there is no wind.

Redirect examination:

When I say the lights were not forward, I mean the lights burning forward on the main-deck, and not her signal-lights, as I saw her red and green lights burning after the collision.

Should judge the collision took place about abreast, or if anything a little above, Ricard's dock. Should judge our stern was about abreast of the dock at the time of the collision. These houses that I saw were back from the dock.

Recross-examination:

I couldn't see Ricard's dock. I did not look for it.

Ques. What reason have you to believe your stern was abreast of Ricard's dock?

Ans. From the way in which I saw the houses.

WM. H. DANA.

Nov. 19, 1869.

32 *Testimony of James B. Newcomb.*

I am 42 years old. I reside in Sombra Township, Ontario, on a part of Lot No. 15, on the river St. Clair. I am a farmer, and shingle and rake manufacturer. Have a factory on the St. Clair River. I remember the night of the collision between the Dove and Mayflower. On that night I was out on the river spearing fish in a boat. At time of collision I was in front of my place, and about quitting fishing and drawing up my

boat. My place is situated about half a mile up the river above Ricard's dock.

I saw a boat I suppose' to be the Mayflower pass me somewhere about the middle of the river where my place is. It was the only boat that passed down about that time. Saw the light above my place, pretty near the Canadian shore, but she was making her way through the fog towards the American shore. The weather that night was considerable foggy, but not so terrible. At times I could see the American shore. At one time I saw a light I supposed was a fishing light on the American shore. Where I was the fog was sometimes thicker than at other times. Sometimes I could see quite clear, but at other times only a very little.

I heard a crash after the propeller had passed. Cannot exactly state how long after. In my best judgment it could not have been over ten minutes at the most, if it was that length of time, after she had passed. That crash seemed somewhere near Ricard's dock. I thought at the time it seemed to be a little below the dock.

When I first saw the light of the Mayflower I thought she was going to stop at Hawkins' dock. She seemed very close on there. I could not then see Hawkins' dock. She was so close in shore that I thought she was going to stop at Hawkins', or one of the other docks near there. These docks are on the Canadian side. Hawkins' dock is somewhere near a mile above mine. When she passed me I judged she was pointing across the river. From where I saw her light first, and from where I saw her when she passed me, she must have made a consider-
33 able across the river during that time. After the crash I saw a light coming across the river and nearing the Canadian shore. This proved to be on the steamer Dove. I should judge, if anything, that she was making down. Should judge that she struck the Canadian shore below where the crash took place.

When I first saw the Dove's bright light she appeared to be on the American shore. I heard her whistle, and that whistle sounded on the American shore. The whistle was blown at different times. Did not notice it particularly until just before the collision. From the time I made the Dove's lights coming over until the time she disappeared behind the docks below, which she struck, couldn't have been over ten minutes, and may have been no more than five minutes. It was quite a little space, as I should judge. She had time enough to cross the river, or two-thirds of it, anyways.

Cross-examined:

I first related these circumstances to a stranger, (or a part of it only,) who was on the Dove when they were trying to raise her. A gentleman from Marine City then came up and asked me if I'd see Mr. Gardner. I said I didn't care. Then Mr. Gardner came up and asked me about it, and I told him what I knew. That is all I have spoken about it. I was next asked to come down here and tell what I knew.

When I first saw the steamboat coming down I cannot tell what kind of light I saw. I was not watching particularly, not supposing that anything was going to take place. I think I saw more than one light on the boat coming down. Saw it was a propeller from the way she was lighted, and so remarked to a boy who was with me. Propeller's lights are arranged differently from those of a tug. They are higher up from the water; there is quite a difference. Propellers have lights sometimes on a pole sticking up forward. And then their cabins are always lighted up. There were quite a number of lights on this boat, and I could see her upper works. Some tugs carry more lights

34 than others. Sometimes they carry lights forward and one aft. There is a great difference between the lights of a propeller and that of a tug-boat. Could not see the hull of this boat particularly. Could see a shade in the water. The lights were middling dim, too.

Ques. If you couldn't see the hull of the boat, nor distinguish her colored lights, how could you tell she was making across the rivers?

Ans. Don't know as I said I couldn't see her colored lights. I didn't particularly notice them. Judged she was making across the river from the difference in position between where I first saw the light and when I saw it when it passed opposite to me. When I first saw her she was so near the Canadian shore that I thought she was going to stop at some of the docks there. The fog lay differently at times. Sometimes I could see the American shore by stooping down and looking under it. And again it would settle down densely on the water. There was not a time that I could not see the trees on the American shore. I could have rowed a boat across the river any time by the landmarks on the American shore. It wasn't clear (that I can say exactly) at 40 feet above the surface. At times it would rise higher, so that I could see quite clear underneath. I started out fishing at about early candle-light. I got back from my sport, I think, about 11 o'clock p. m. The whistle I heard, as already stated, am quite sure was the Dove's. I think I also heard the Mayflower's. Remarked "There comes the Dove," when I heard her whistle. It is quite different from other steamers. I know the boats both blowed, but I did not pay any attention. I heard them both blow before the crash. Heard no blowing after it. Along early in the evening a tow passed us, and perhaps some other boats. There were not many boats moving at that time. Cannot say certainly that even the tow passed. I was not paying particular attention to that, but to my fishing. When I first saw the vessel, which proved to be the Dove

35 after the collision, I cannot say what lights I observed on her, but only that they were coming in to shore. Don't know the width of the river at my place. It is said to be from three-quarters to seven-eighths of a mile. The Dove struck on the Canada shore, just a piece below "Clay Creek," and about three-fourths of a mile below my place. Can't say whether I saw the Dove's lights just before or just after the crash. Think I looked down just after she blowed and saw a very dim light. When I first saw the Dove's lights before the collision I judge she was middling close, if not quite close, to the American shore.

JAMES B. NEWCOMB.

Nov. 28, 1869.

Testimony of James Hawkins.

I am going on 20 years old. Live on the Canadian shore of St. Clair River, about one and a quarter miles above Ricard's dock. I have sailed about three years, off and on; mostly on tug-boats on the river as wheelsman. Have always lived on the St. Clair River. My father's house is about 100 feet from the gangway of the dock. I am familiar with the whole river along there; have hunted and fished over it, and been over it in boats. I remember the collision between the Mayflower and Dove last season. I heard the crash of it. I was then in the house of my father, and had my head out of the window watching the Mayflower. I first saw the Mayflower's lights right abreast of my father's house. I heard the boat whistle, put my head out of the window, and saw her there. Guess she was within 150 feet of the dock. She was very close to it. After she passed our dock she kept right down until she got a little below Bowen's dock, then she changed her course right for Ricard's dock. That is the course boats usually pursue. I saw her

until she got a little better than half way across. When I last saw her she was heading, as I supposed, right on to Ricard's dock.

36 Right abreast of father's dock she blowed one whistle. When she got pretty near the other side of the river she blowed two whistles. I remarked the fact to another young man with me. I saw the boat was going wrong, according to her whistle, and remarked there would be some fuss there, and very soon after I heard the collision.

(Objection made by Mr. Russell to remarks of witness to his companion as not competent.)

Before I made the remark, I heard the Dove's whistle (I am well acquainted with it) coming up the river. The Dove was blowing two blasts.

When the Mayflower passed father's dock I judged she was going pretty fast. When I heard the Dove's whistles she seemed to be, as near as I could judge, in the bay, below Ricard's dock, on the American side of the river. The crash of the collision appeared to be right up near Ricard's dock, and on the American shore. I saw no light at all after the collision. Could hear the noise of a boat working across the river, but it was rather too thick for me to see any light.

It didn't seem more than four or five minutes after the boat passed my father's dock until I heard the crash. I saw no other steamer pass about that time.

I was coming down to Detroit yesterday to settle up with the Tug Association. I came down on the Dove. I paid my fare. Was not coming here to give my testimony. I saw Mr. Gardner on the Dove. Never had seen him before to talk to him about the collision.

Bowen's dock is three or four hundred feet below my father's dock.

Cross-examined:

I cannot read nor write. I commenced to be a wheelsman about three years ago. First went on tug Sattel'ite. Was three or four days on her. Left her because I had a chance to go with my brother and some other acquaintances on the Constitution. I stayed on her for four months and seventeen days. I left her to get more wages. Went to the

37 B. B. Jones. Stayed on her for a month. Struck for more wages, and the captain paid me off. Then I went on the Dispatch. Didn't get a raise of wages on her. Remained on her two weeks. Captain Grummond and I had a fuss, and I left her. It was about chang ing the boat on her course. The mate gave me orders to port half a point more. I did so. Capt. Grummond objected to my doing so. I said I did as the mate ordered me. He struck at me, and I left the wheel-house, and left the boat at Malden. I got my pay. I went home then; it was so late in the fall. I didn't sail the next year. Sailed the year after on the Kate Moffat. Stayed on her nearly seven weeks. Left her for more wages. Then I went home again. Went sailing in fall of same year on board of a scow (Liberty) as a foremast hand. Stayed there twelve days. She was too cold, and I didn't like her. Then went on tug Kate Williams. Stayed there twenty-five days. Left her to go on tug Kate Moffat again, because I thought more of the Moffat's captain than the Williams', and she wooded near where I lived. I stayed on the Moffat eight days. The mate and I had a dispute about standing watch. I went home then. That was this last season. Can't tell the date of the year when I went home, because I have no learning. Do not know what year it is now. Know what month it is now; it is November. Don't know in what year I was born. Know day of month when I was born. Will be 20 on Feb. 18th.

Went to bed on night of collision near 11 o'clock, or, perhaps, near

12; William Kane slept in same bed. He was working on father's place, getting out spiles. Don't know how old he is—three or four years older than I. He works round by the month. Saw him last about four months ago, when he left to go to Long Island, right abreast of Kingston, where his father is a farmer.

It is a very common thing to hear whistles in the night-time, going past our house. I wasn't in bed when I looked out of the window; heard the whistle close to our dock, and raised the window and looked out. Am in the habit of so doing when I hear boats whistling
38 and approaching each other, especially at night when it is thick. Kane did not look out too; he was undressed, and had just laid down in bed when they struck. I stayed at the window until after they had struck, then ran out doors and down to where father was on the dock. I stood there and heard them talking loud on the boats; listened until I thought I heard one of them get on the Canada bank; then I went to bed. When I went down to father, I left the window up; it was still up when I got back. Kane was looking out of window when I got back; he didn't get up or look out before I left. I jumped and run whenever I heard the crash.

The Mayflower was 150 feet from our dock when I first looked out; I could see her hull distinctly; could see her bright light ahead and her bright light behind; did not take notice of any other lights on her; I stayed at the window, looking that way, about four or five minutes, until the collision occur'ed. I thought there would be a collision by the way she was going, according to the whistle she was blowing. I could just see the American shore right abreast of our place; could not see Ricard's dock; could not see the lights of the Dove. Could tell she was in the bay below Ricard's dock from hearing her whistle, and from the direction from which I heard it. I couldn't see her. Didn't see the Dove nor her lights at all, until I saw her on the bank next morning. Judge the Dove got on Canadian shore, because I heard her work in over there, and then her paddles stopped working, and I could tell she was right in on the Canadian side. The Dove did not keep blowing her whistle after the crash; judged that she had crossed the river and come over to the American shore, merely from sound of her paddles; couldn't see her lights. After the crash, the Mayflower seemed to keep along down the river close to the American shore. I could hear her whistling after the collision, and could thereby tell she was close to the American shore. She blowed one at a time, and blowed them pretty often after the collision. I was waiting up late that night for my father to come in; don't always sit up until he comes in. He was out fishing;
39 I and Kane had been playing euchre in the kitchen; father was standing listening to the boats when I got down to him.

I first told of this to a neighbor, William Bowen, on the next day; he had seen the whole thing, as well as I had; most all the neighbors round there were talking about it, and I spoke of it to them. Mr. Gallagher, here, was the first one who asked me to give my testimony, nearly three months ago. I guess he asked me a month or a little better after the collision. I went nowhere at any time to have my statement taken down; this is the first time I have ever delivered testimony. I know a man named Newcomb, well; he lives about a mile or more below our place. I have no regular time for going to bed—from 8 to 11 p. m. Kane had been at father's house about two months; he left very nearly a month after that.

his
JAMES + HAWKINS.
mark.

Nov. 27th, 1869.

Testimony of Michael Haughans.

Am fifty years old. Live in Moore Sp., Canada, on river St. Clair; my house is about one hundred and fifty feet from the water's edge; it is about one and one-quarter miles above Mr. Bowen's house. I have lived in my present house seven years; before that, lived in Kingston, on Lake Ontario. I am acquainted with the river between my dock and Marine City; know the general formation of the river thereabouts, and the run of the banks. I have examined the chart now shown me by Dove's proctor.

Ques. State your opinion as to its accuracy.

Ans. I certainly think it is correct.

(Map is now offered in evidence, and hereunto attached, and marked "Exhibit A;" was objected to by Mayflower's proctor, as not properly authenticated.)

I remember the evening of the collision between the Dove and
40 the Mayflower. During that evening I was out fishing, down below my place nearly a mile, on Canada side of river, between one-quarter and one-half a mile above Gray's dock.

Ques. Please mark with a red pencil the place where you were fishing, on map.

(The above question objected to by Mayflower's proctor, as irrelevant.

The mark also objected to because location of mark was pointed out by counsel to witness.)

Ans. I have done as requested.

Ques. Did you or I point out location of mark on map?

Ans. I asked you to point out location of Gray's dock, and when you did so I showed you where I was fishing.

Ques. What did you observe or hear while fishing there?

Ans. I heard the Dove blowing her whistle across the river in Ricard's Bay half an hour before I left there; I remarked to the boy that she was delayed by the fog, or was aground, or something was the matter with her, as she stopped there so long. (Statement of witness to the third party while fishing objected to by Mayflower's proctor, as incompetent.) I couldn't see the Dove on account of the fog. I knew from the position I was in, and from where I heard her whistle come, that she was in Ricard's Bay, on American side; knew by the sound she was right across the river from me. The Dove generally blew two blasts.

Ques. How many times did she blow, and was she blowing when you left there?

Ans. Pretty often when she was over there—she'd blow every few minutes. She was blowing when I left there.

Ques. Where did you go from there?

Ans. I went up the river to my own house.

Ques. Do you own a dock? If so, point it out on the map.

Ans. I now do so.

(Witness points it out and commissioner marks it.)

Ques. Did you see the Mayflower?

Ans. I saw a boat coming down.

41 Ques. When did you see her?

Ans. After I had got home and was standing on the beach, where I stood as she passed down.

Ques. How long had you been home?

Ans. I had just got to shore when she passed. I had not been into my house when she passed.

Ques. How long did you continue to hear the Dove's whistles during the entire time?

Ans. Between one-half and three-quarters of an hour.

Ques. State how far the Mayflower passed from your dock.

Ans. I cannot say how many feet or rods, but she passed quite close.

Ques. Did you hear her engine as she passed down?

Ans. She blew one whistle before she came to my dock, and after she passed my dock she blew another.

Ques. State whether you could see her outline as she passed.

Ans. Oh, yes; I could see her hull as she passed.

Ques. State the direction she took after passing your dock.

Ans. For Ricard's Point.

Ques. Where was she when you lost sight of her?

Ans. About half-way across the river.

Ques. Which way did she appear to be heading the last you saw of her?

Ans. Towards Ricard's.

Ques. How far below your dock was she when you lost sight of her?

Ans. Nearly half a mile.

Ques. Point out Reynold's dock on the map.

(Witness points it out and it is marked by commissioner.)

Ques. State in your opinion whether she was above or below Reynold's dock at the time you lost sight of her.

Ans. She was below the dock.

Ques. How far below?

Ans. She couldn't have been far below, some forty rods.

42 Ques. State whether you heard any whistle after you lost sight of her.

Ans. I heard some whistles from both the boats, very short and quick, and in just a second after I heard the collision.

Ques. State what direction the whistles appeared to come from.

Ans. From the American side, below Ricard's.

Ques. State where the sound of the collision appeared to come from.

Ans. From the American side and from a little below Ricard's.

Ques. State whether you heard the wheels of the Dove after the collision, and if so, from whence the sound appeared to come and in what direction it proceeded.

Ans. I heard her wheels, and I took her then to be right across to Mr. Ricard's and a little below it.

Ques. State whether you could perceive any change in the direction of the sound, and if so, what change.

Ans. While her wheels were working; I should judge I could hear them working seven or eight minutes, and when they stopped the sound came from our shore, from the bay right below me.

Ques. Can you state accurately the direction of Ricard's dock from your dock?

Ans. I could not by the compass, but I know its position by my eye.

Ques. What was the character of the fog that night?

Ans. It was in banks, variable.

Ques. Was it moving or did it appear to be fixed?

Ans. I could not say, but when I was fishing I sometimes came into it thick, and then again it would be thinner in parts.

Ques. How was it as to depth?

Ans. Sometimes it was very thick. Didn't pay attention to its height.

43 Cross-examined:

Ques. How often do you go out fishing?

Ans. In spring, maybe three or four times a week, depending on clearness of the water.

Ques. Do you prefer going out foggy nights?

Ans. Not on foggy nights more than any other nights.

Ques. What kind of fish were you fishing for?

Ans. Herring, pickerel, and such like.

Ques. Could you see the Canada shore from where you were fishing?

Ans. I could.

Ques. Could you see the American shore from where you were fishing?

Ans. No, sir; I could not.

Ques. How many fish did you catch?

Ans. A pan full.

Ques. When you got to your dock where did you take your fish to?

Ans. Into the house.

Ques. Did you go out of the house after you put your fish away?

Ans. I may have went to the door. Don't remember going any further.

Ques. When you got ashore didn't you go directly up to your house and put your fish away?

Ans. No, sir.

Ques. What did you hang around the dock for?

Ans. To take the pine from the boat, and waiting for my boy to return from the house, where I had sent him for a pan to put the fish in.

Ques. How long was the boy gone for the pan?

Ans. He might have been gone a minute and a half, not more.

Ans. When you got the pan didn't you go right up to your house?

Ans. No, sir.

44 Ques. What did you stay any longer around the dock for?

Ans. Picking up my fish, and to put my light out.

Ques. How long did that take you?

Ans. Not long. Perhaps a minute, or a little longer. Can't say exactly.

Ques. As soon as you got your fish didn't you go to your house?

Ans. We then put up our jack-light, saw all was right, and went up to the house.

Ques. You say you saw a vessel go by. What kind of a light did you see?

Ans. I saw a propeller or steamboat go by. I saw two white lights, one forward and one aft. I didn't see any colored lights at all.

Ques. Did you see more than one steam-vessel?

Ans. That is all. I do not know what it was—what steamer it was. I heard afterwards it was the Mayflower.

Ques. Isn't it a common thing for boats to go by there?

Ans. Yes, sir.

Ques. Had you any reason for looking at that steamer more than any other steamer?

Ans. Yes. When we came to the lower end of the dock the boy remarked there was a boat coming down on us. I said, Never mind the boat—pull; and I had to help him, and to hurry up to get out of the way, and just as we got out of the way she passed us. Then I sent the boy to the house for the pan.

Ques. Hadn't the fog cleared away so you could see across the river?

Ans. Yes, it had. Opposite my place it had cleared away then so that you could see across.

Ques. Couldn't you see the outline of the trees and the houses on the American shore pretty well?

Ans. No, sir; I could not.

Ques. Wasn't it clear, bright, overhead?

Ans. No, sir; it was not.

Ques. Couldn't you see a light the width of the river?

45 Ans. Yes, sir; I could part of the time, and part of the time I could not.

Ques. Couldn't you tell the color of a light the width of the river?

Ans. Yes, sir; if I had seen it.

Ques. What colored light does a steamboat carry on the right-hand side?

Ans. I am not certain.

Ques. What colored light does a steamboat carry on the left-hand?

Ans. I have often observed such lights, but not with particular attention to distinguish them. I cannot say.

Ques. What colored light does a steamboat carry on her stern?

Ans. A white or bright light.

Ques. What colored light does a steamboat carry on her stem?

Ans. I don't know as I ever noticed any on her stem.

Ques. Could not you see a vessel's hull across the river?

Ans. Well, no, unless she had lights on her. Then you could see them.

Ques. If you are not acquainted with a steamer's lights, and are unable to see her hull, in what way do you tell in what direction she was going?

Ans. I seen her lights and I seen her hull.

Ques. How do you distinguish the whistle of one boat from the whistle of another boat?

Ans. Through their sounds. They have different sounds. Some are coarse and some are more fine.

Ques. Describe the sounds you heard from Ricard's Bay. Was it a coarse or a fine sound?

Ans. It was neither. It was between the two.

Ques. Who first talked with you about giving your testimony?

Ans. Mr. Gallagher, a day or two after the collision happened.

Ques. Did he employ you to come down as a witness?

Ans. No, sir.

46 Ques. Who did?

Ans. He came there last Saturday, and wished me to come down, saying he understood I knew something about it. This was the second time he had been there for me. The first time I wouldn't come. This second time he said if I wouldn't come they would send for me to come to Sarnia, and take my evidence there.

Ques. How came you to come finally?

Ans. I have a daughter and cousins here, and he said he was willing to pay my expenses if I would come down. Don't know what my expenses are until I get back. I was to receive no agreed or particular sum to cover expenses.

Ques. What do you know about that map?

Ans. I know it is a correct map of the river where I live. I first looked at it this morning. I looked at it first in another room before I came into this room to give my testimony.

Ques. How many minutes before you were sworn this morning did you look at that map for the first time?

Ans. I saw it for the first time about five minutes before I came into this room to give my evidence.

Ques. Did you ever see any other chart or map of the river?

Ans. Yes, sir; I have.

Ques. Did you ever make a map, or practice engineering and surveying?

Ans. No, sir.

Ques. Do you know on what scale to the mile that map is drawn?

Ans. I do not.

Ques. In your opinion, is the scale nearest ten feet or ten inches to the mile?

Ans. I don't know anything about that. I know the lay of the river and the distance of miles on the land, but as to the scale of the map I know nothing about it.

Ques. Where did the steamboat that passed your dock carry her head-light; on the pilot-house or on the stem?

Ans. On the pilot-house.

Ques. What color was it?

47 Ans. A white light.

Ques. Where were you when you heard the noise of the collision?

Ans. On the beach.

Ques. What did you do?

Ans. I jumped up and remarked to the boy that I feared there had been a great many lives lost by the collision of those boats.

Redirect examination:

Ques. What you state about the maps is simply about the points and general shape of the river, isn't it?

Ans. Yes, sir.

Ques. In fishing, you use what you call a jack-light; a large pine-knot?

Ans. We do. We hadn't put out that light until I had the skiff cleaned and the fish all taken out of it.

Ques. When this propeller went by you how did she go, fast or slow?

Ans. She passed going fast, and continued that speed until the whistle sounded short and fast.

I am acquainted with the sound of the Dove's whistle.

his
MICHAEL + HOUGHANS.
mark.

FEB. 10, 1870.

Testimony of William H. Bowen.

Am a farmer, and keep a wood-dock in Moore Township, Canada; I have lived in the same spot twenty-odd years. I am acquainted with the river between my dock and Marine City, and the head of the shores.

Ques. Look at Exhibit A, and state your opinion as to the outline of the river as given on that map. (Map marked "Exhibit A" shown to witness.)

48 Ans. I suppose it is nearly like that. I think it is correct.

Ques. Point out to the commissioner your dock on that map.

Ans. I do.

(Witness points it out, and it is marked as Bowen's dock by commissioner.)

(Same objection entered to map by Mayflower's proctor as heretofore entered.)

My dock is about forty rods below Houghan's dock.

On the evening of the collision between the Dove and the Mayflower I was at home and in bed. My house is 150 to 200 feet from the water's edge. I occupied a room looking out on the river, on first floor of my house; I was wakened by hearing a whistle of a boat, I supposed going down, blowing one blast. I got up and looked out of the window. I saw a boat and three lights on her. I went to the door. There were two white lights and a red light. That vessel passed pretty close to my wharf—300 or 400 feet distance, and probably closer; she was going pretty fast; cannot tell how fast. When I went to the door she was a little below my place. After passing, she seemed to be going in the direction of Ricard's. When I saw her last I should judge she was nearly in the middle of the river. When I last saw her, she was about one-half a mile below my place.

In order to get over on the Canadian side, opposite Ricard's, when I last saw her, she would have to get around and change her course entirely. I heard her whistle after I lost sight of her; it appeared to come from the direction of Ricard's. I also heard a whistle I suppose was the Dove's; it sounded as if coming from the same point—from Ricard's. I know the sound of the Dove's whistle, and am quite sure I recognized it that night.

Cross-examination:

That map seems quite natural. It looks like the river there, and the places look as if they were properly put down. That is all I can say about it. It is a very common thing for me to hear whistles after
49 I have gone to bed; but I often get up when I hear a whistle. I make a practice, when I hear a whistle near by, to get up to see if they are coming to my dock. I am quite often called on to supply wood in the night-time. I heard the noise of the collision; I had gone back into bed when I heard the noise. I was but a few moments up. I just went to the door, and as she got out of sight I went back to bed. I had been in bed but a very few minutes when I heard the crash. I got up a second time, went out of my house, and went down to the road. I heard people hollering; the wheels of a steamer working. Could see nothing; went back to bed.

Ques. When you found the steamer wasn't going to stop at your dock what interest had you in observing her direction subsequently?

Ans. I had no reason to watch her.

Ques. Having no reason to watch her, did you, in point of fact, actually watch her, or did you slide back to bed?

Ans. I watched her until the light disappeared, then went back into bed.

Redirect examination:

Ques. Did you observe any change in the direction of the sound of the wheels after the collision?

Ans. I couldn't tell where the collision sounded from, but the sound of the wheels seemed to come from about the middle of the river.

Ques. Did they seem to be proceeding toward or from the Canada shore?

Ans. Toward the Canada shore.

W. H. BOWEN.

50 *Testimony of Henry Campbell.*

I live in Algonac. Have sailed two seasons and a part of a third. I was on the Dove at the time of her collision with the Mayflower as look-out. I shipped on her about April 20th. On night of collision I went on watch at 6 p. m. Was stationed forward of the pilot-house on the promenade-deck. My duty there was to look out for lights and to report to the officer of the deck. When I went on watch the Dove was crossing the St. Clair Flats. We touched at Marine City. When we went into port I went to tend the lines, but returned, when we started, to my same post, and did not leave it at all until the collision. After leaving Marine City Capt. Sloan was officer of the deck, and was at the usual place for officer of deck, on the pilot-house; aft of the dome of such house and above the steering-wheel. He was there all the time from leaving Marine City till collision. We followed the shore after leaving Marine City, all the way up, as I supposed. Didn't notice the shore after leaving Gallagher's Mill dock. I was looking ahead. We ran right along by Gallagher's Mill dock, which is in the upper part of Marine City, and about half a mile above where we stopped. We had our signal-lights, head-lights, green and red light burning; burning well. I saw them. It was a very thick night; dark, not foggy. We were running under a check, and quite slowly. We nearly ran aground; heard the captain and Donaldson both say they were nearly aground in that bay between Ricard's and Marine City, on the American side of the river. We kept sounding two whistles at intervals apart of about two minutes. The first I saw of the vessel, which afterwards proved to be the Mayflower, was her head-light. It bore on the port bow. I should judge a little on the port bow; can't tell exactly how much. It seemed, when I first saw it, quite a distance off. I reported the light to the captain. He answered that he saw it. We were then running slow, about the speed we had been running. It was a very short time from seeing this light until the collision. It proved to be close by. They didn't stop the Dove until we saw the hull of the Mayflower. It seemed to raise right
51 out of the fog-bed. They stopped the Dove's engine then and reversed it. Before the collision our whistles were answered from the other vessel with two whistles. Heard this but once after I saw the light; had heard such whistles twice before I saw the light. When she came out of the fog she was right onto us. She hit us on the stem, on the port side. I didn't notice any bells rung or any hail from the Mayflower before she hit us. As soon as they hit us I went right aft and helped to get down the boats. I thought we were on the American side when we were hit, but didn't know positively, as I didn't see the land. I think now we were on that side when hit, from the fact of our running aground in that bay just before. We fetched up after collision on the Canada side. Judged we struck the bank a little slanting up. Think the bow was a little slanting up when we struck. We struck shore from fifteen to twenty minutes after collision, judging from what we done. It was a thick night, dark and foggy.

(Objection entered by Mayflower's proctor as to conversation on the Dove between the officers, and prior to the collision.)

Cross-examined:

I live now on American side. Have served before going on Dove as fireman and wheelsman. Have "wheeled" one season and part of another. Commenced as fireman. Have followed the water two seasons and part of another. Was born in Cotterville, St. Clair County. Wa

raised on and remained on a farm until twenty-one years old. I consider that we were on the American side from the fact that we were aground on that side a short time previously. Did not see the American side at all after leaving Gallagher's Mill dock. Don't remember how our wheel was put right after we grounded. Heard no order to that effect. Cannot tell the course the Dove was laid on after she got aground. After we were said to be aground they stopped the engine and swung off the bank; didn't back off at all. I supposed she was aground and swung off because they didn't work her, but stopped the engine.

52 I did not hear any orders to port nor back. Don't think she went on the ground, but only touched and swung off. Cannot tell the direction the Dove took after she swung off; nor whether she swung to port or not. I did not hear any order whatever given by Sloan from that time until the collision. He was upon the upper deck and I on the deck below, (promenade-deck,) forward of the pilot-house. I stood leaning against the bells. Might have heard if he spoke to man at wheel, if I had been paying any attention, but was not attending, and cannot remember having heard any orders. Before collision I saw no lights except Mayflower's bright light. At the moment of striking I observed no other light on her, because I observed nothing but the hull of the boat right in on the port side. Cannot say how hard our vessel backed, if any. After collision I can only state my personal share in getting boats down. I had never acted as lookout before that season. Had served as lookout all the season on the Dove. There was no other lookout.

Ques. Did you not hear Sloan say, after the collision, that the Dove could not recover any damages, because she was in fault?

(Objected to by Dove's proctor as incompetent and irrelevant.)

Ans. I did not hear him say so, or any such thing.

I know Chester Kimball. Didn't tell him at Algonac, shortly after the collision, that Captain Sloan said as above; and never told any one else to that effect. Do not recollect having any conversation at any time with Kimball about the collision. Was in a grocery at Algonac after collision; talked to several present about it, but can't say if Kimball or D. Swartout were present; have talked about it several times. Many persons have asked how it happened, and I've told them. In my opinion, the Dove was not in fault in this case. I did not tell D. Swartout, shortly after the collision, that, in my opinion, the Dove was in fault.

I have said that it was my opinion that they were both in fault in running on such a dark night, because it involved the loss of life and property; but I do not know as my opinion is worth anything.

53 Ques. Did you not agree with Captain Woodworth to come to Detroit without being summoned, and appear as a witness on behalf of the Mayflower?

Ans. No, sir.

Ques. Did you yourself write, or authorize any one else to write, a letter to Captain Woodworth to that effect?

Ans. I told Mr. Galloway to write a letter to Captain Woodworth. Captain W. had previously come for me, wanting me to come down here and give my evidence about the collision. He said to Mr. Galloway he'd pay my expenses. I told Mr. Galloway to write to Mr. Woodworth that I'd come down here with him; I supposed I'd have to come down here anyway to testify about the collision. I saw the letter; didn't read it; it was written week before last, Galloway read the letter to me, and I signed it. Nothing was said in it about giving evidence on behalf

of the Mayflower, but that I would come without being summoned. I would have come down here with Woodworth if I had been well at the time, which I was not. Mr. Gallagher came to me for the first time last Saturday. He is one of the Dove's owners. He wanted me to come down; offered me the same as Woodworth did—to pay me for my expenses and time.

Ques. When you fetched up, did you know which side of the river you were on?

Ans. I did not know until I was told. I think the mate first told; his name was Broadbridge; don't know as any one else told me. I didn't ask any one else.

Ques. I didn't know the course we were running on, and paid no attention to how we had run after the collision. I don't know as I can box the compass all through—never learned it.

Ques. Could you tell that night, unless you were looking directly at the compass, anything of the direction you were steering or heading at any given time?

Ans. I couldn't without seeing the shore, and I didn't see it after leaving Gallagher's dock.

54 Redirect examination:

I live eight miles from Marine City, and eleven or twelve miles from where collision took place.

Ques. State whether you noticed any material change in the heading of the steamer after she passed up by Gallagher's dock and until the collision.

Ans. No, sir; I did not notice any change.

Ques. State whether you paid particular attention to anything but your looking out for lights that night; either to lands, or bells, or whistles.

Ans. No, sir, I did not, except as to whistles; supposed it was part of my duty to notice these, as well as lights, and did notice them.

I have never told any story to any one different from the statement I have made here to-day, that I know of. It made no difference to me on which side I told my story. I have but the one story to tell.

HENRY CAMPBELL.

Testimony of James W. Broadbridge.

Am thirty-one years old; live in Marine City; am a mariner; have sailed ten or twelve years. As an officer I've sailed six years, and as first mate for five of these years, and one season as master. I was mate of the Dove at the time of the collision with the Mayflower. The collision took place in the captain's watch. I was turned in. I turned in a little after 6 p. m. The Dove was then about one-half or three-fourths of a mile below the flats. I went to sleep, and was not awake from that time until after the collision. When I turned in I pulled off all except my shirt and pants.

When I came on deck the Mayflower and Dove were right 'longside; the Dove being on the port side of the Mayflower; they were heading pretty near the same way. I put my vest, boots, and hat on after
55 waking up, and before I came on deck. When I first came on deck I run up or hoisted one end of the starboard boat, which was abreast of my room, just aft of the starboard wheel. My room is on the promenade-deck. The watchman, that is the look-out, wakened me by calling me—I mean the preceding witness, Campbell. When I came out I can't say which way the vessels were heading, as to shore. I could

see the tops of trees from the starboard side, where I was, on shore. Looking ahead and aft, off the starboard bow and port quarter, I could see the land. After running up one of the small boats I went forward to the office on the promenade-deck, as I saw a lamp in there which had exploded and caught fire; I helped to put it out. I then went aft again, and then went down forward with Captain Sloan to see where she was cut, and if there was any chance of stopping the leak; was there only a few minutes—not more than three or four minutes. Then I went down to the engine-room. The engine was working at this time with full power. I told the engineer she was heading for shore and to let her work full stroke, as hard as she could; he said she was. I went on deck again to the boat I had just hoisted on the crane, and lowered it down even with the gangway. The captain hollered and asked if I was there, and if the boat was all ready. I answered it was. In a very few minutes after that the boat fetched up on the Canada side. Sloan told me to lower the boat and come up on the starboard bow. I did so. I and the lookout brought the boat up on the starboard bow. From the time I came on deck and saw the Dove and Mayflower laying alongside, I don't think the Dove's heading was changed, to amount to anything, until she struck ground, although I wasn't watching the compass during the time. Her wheel was hard-a-starboard while we were so running—that is, Captain Sloan told me so at that time.

(Mayflower's proctor here objects to last answer as being hearsay.)

Ques. Did you ask him, or did he state this?

Ans. He said he guessed she'd go pretty straight across; he'd got her wheel hard-a-starboard, and the bow being broken would make her swing to starboard.

(Question and answer objected to by Mayflower's proctor as incompetent.)

Sloan at this time was standing in front of the pilot-house, right
56 by the bells. From the time I was called by the lookout until the Dove struck the bank was about fifteen or twenty minutes. I live about three miles from where this collision took place, and am pretty familiar with the river there.

My sailing has been chiefly between Buffalo and Chicago. During season of collision, and before the accident, the Dove passed place of collision twice on every day, going down and up. In that neighborhood she touched at the Canadian side in that vicinity but once or twice during that season. When I came on deck I can't tell where we were. My first impression was, judging from the tops of the trees, that we were down near that island below Algonac.

Ques. Where do you judge you were when you came on deck that night?

Ans. I know now where we were. We were at Ricard's dock, or thereabouts; not a great way from there.

Ques. On which side of the river, if on either?

Ans. I think we were on the American side.

It was a pretty thick night, a kind of streaky fog. Sometimes you could not see anything, and sometimes it would clear off in a minute.

Our boat was in good condition that night, with a full crew. Her lights were all burning when I came on deck after the collision.

The Mayflower was on our starboard side. She was passing right along our starboard side, so that I could have stepped off on her if I had wanted to do so.

I could see tops of trees on both sides of river. Did not observe

which side appeared nearest. At that time the fog was so thick below that you could not see anything, but above it did not rise so high.

On right, above Ricard's dock, there is a big bunch of trees, and on the Canada side the woods come right down to the water all along. There is a little bay or marsh setting back from the channel right below Ricard's dock. The timber does not come up to the channel edge there, but is brush from the river for some distance, a half a mile or more.

57 Cross-examined:

Ques. How is it that you did not know at the time where you were when you came on deck, and are able now to testify that you do at the present time actually know where you were?

Ans. It was thick, and I had just got up out of sleep, but we laid several days where the collision happened, and I had ought to know where it was.

Ques. In what way did you first find out afterwards where you were at that time?

Ans. It cleared up shortly after we fetched up over there, so that I could see. The noise of the collision did not waken me.

Ques. Do you know how long after the blow it was that Campbell, the lookout, came and called you?

Ans. No, sir; I don't. He said when he called me, "Get up, for God sake; get up quick, the boat is sinking."

Ques. You testify that when you came on deck the two boats were alongside, the Mayflower on your starboard side. Did you know that your vessel had backed out from the starboard side of the Mayflower a considerable distance, and had then started forward and had come up on the port side of the Mayflower?

Ans. No, sir.

Ques. Just as you came on deck did you hear a hail from the Mayflower that your boat was on fire?

Ans. No, sir.

Ques. Was not the first thing you paid attention to when you got on deck the extinguishing of the fire?

Ans. No, sir. The first was to hoist the boat.

I discovered the light of the fire when I was hoisting the boat. We did not lay together a long time; no time at all hardly, as both boats were moving.

Ques. When the cry of fire arose wasn't the Dove's engines stopped alongside the Mayflower?

Ans. No, sir; and I didn't hear any cry of fire. I saw a light and went to put it out. Nor was our engine stopped shortly after I
58 came on deck. After we fetched up I couldn't see the Mayflower's lights at all. I did not see a light on her at all, at any time, after I came on deck. I could not see her hull, nor see her at all, after we had fetched up.

Ques. When you fetched up, did you know which side of the river you were on, and how?

Ans. Yes, sir. I knew by pretty good authority which way we were heading for, and knew we were on the Canadian bank. I mean by the captain's authority, who said we were heading for the Canadian shore when I first came on deck.

Ques. Did you know, aside from what the captain told you, which side of the river you fetched up on, at the time you fetched up?

Ans. No, sir, I did not know at the time, but did know after it cleared up.

Ques. If you did not know at the time which shore you fetched up on, aside from what the captain told you, how could you testify upon your direct examination that when you came on deck after the collision you were in Ricard's Bay, or on the American shore?

Ans. I judged from the time it took before we fetched up after I came on deck.

Ques. Did Henry Campbell, the lookout, ask you which side of the river you fetched up on, at the time?

Ans. Yes, sir; I think he did.

Ques. What makes you estimate that it was fifteen or twenty minutes from the time you came on deck until you fetched up? And is it not mere guess-work?

Ans. You can call it guess-work if you are a mind to, but such is my judgment, from what I did about the boat from the time I came on deck until she fetched up.

Ques. Were you in the small boat with Robinson, one of the wheelsmen, after fetching up?

Ans. No, sir; I was not.

Ques. Do you consider a steamboat fully officered without a second mate, and had you any second mate?

Ans. We had a man there acting as second mate. I do not consider a steamboat fully officered without a second mate.

59 Ques. Was not the person acting as second mate shipped as wheelsman or look-out?

Ans. He was shipped as wheelsman.

Ques. How can you testify that both boats were moving as you came on deck?

Ans. They were passing each other, and I know our boat was working.

J. W. BROADBRIDGE.

FEB. 15, 1870.

Testimony of Charles Glover.

I live at Paw Paw. Have been brought up to farming. Have sailed on a trip from Bay City to Chicago, and on propeller Mayflower from Chicago to Buffalo. That is all I have sailed. From Saginaw to Chicago I sailed as ordinary seaman on schooner Champion.

Ques. Will you state under what arrangement you shipped on propeller Mayflower at Chicago?

Ans. I was to help them wood up at Chicago, help them wood up on the voyage, and pay $2 for my passage. I was to help wood up on the trip.

Ques. State whether you were to do any duty while the vessel was in motion.

Ans. No, sir.

Ques. Did you make any representation to any officer of the boat regarding your ability as a seaman?

Ans. No, sir.

Ques. State whether you were shipped as a seaman in Chicago in any sense.

(Objected to by Mayflower's proctor, as leading.)

Ans. No, sir.

Ques. State whether you made any statement to Captain Woodworth regarding your experience in sailing?

Ans. I told him I had made one trip before that, and that only.

60 Ques. State in what capacity you acted in coming down the St. Clair River.

Ans. Well, I acted as lookout man until we got into the river, and then I was sent up into the pilot-house to help shift the wheel when necessary.

Ques. How came you to act as lookout?

Ans. The mate kind of came to me and told me he wanted me to take the other look-out man's place, because he wasn't able to. This was about 6 o'clock p. m. The boat was then about two hours' run from the mouth of St. Clair River. Cannot tell exactly.

Ques. Had you looked out before on the passage?

Ans. I had not.

Ques. Had you ever looked out before?

Ans. Yes, once or twice before, on the schooner.

Ques. What did the mate say he wanted you to do?

Ans. He said he wanted me to go forward on the promenade-deck, and look out for lights, and when I saw them report to him.

Ques. When did he send you to the wheel?

Ans. After we got into the river.

Ques. How long was this before the collision?

Ans. About two or three hours, I should judge.

Ques. Who took your place as lookout?

Ans. No one.

Ques. Which side of the river did you keep going down?

Ans. Sometimes on one side and sometimes on another.

Ques. Who was with you at the wheel?

Ans. I don't remember his name.

Ques. Can you state whether it was the regular wheelsman?

Ans. Yes, sir, it was.

Ques. Who was on the promenade-deck from the time you took the wheel besides yourself and the wheelsman?

Ans. The first mate and a passenger named Barker.

Ques. Was there any one else on deck?

Ans. No, sir.

61 Ques. Where was the mate standing during the evening?

Ans. On the promenade-deck, in front of the pilot-house. Barker was on the promenade, on the port side. During the evening, after going to the wheel, I was in the pilot-house. The mate gave the orders to the man at the wheel during the evening, while I was at the wheel. No one else gave any orders. Capt. Woodworth, the master, was in his cabin, I suppose; don't know.

(Last answer objected to by Mayflower's proctor, as incompetent, being based on supposition.)

Ques. Did you see Capt. Woodworth after you went to the pilot-house?

Ans. No, sir. Not till after the collision.

Ques. How was the weather that evening?

Ans. There was a fog.

Ques. Did you pass any vessels and tows on your way down?

Ans. Yes, sir, we did.

Ques. On which side of you did you pass them?

Ans. Sometimes on one side, and sometimes on another.

(Question and answer objected to by Mayflower's proctor, as incompetent.)

Ques. Could you see the shore as you went down?

Ans. Not distinctly. Could see the lights.

Ques. Do you recollect seeing a wood-dock and a light just before the collision?

(Question objected to by Mayflower's proctor as leading.)

Ans. Yes, sir.

Ques. On which side of the river?

Ans. On the Canada side.

Ques. State whether anything was said or done at that time to call your attention to it.

Ans. I noticed the light just above the dock, and I spoke to the wheelsman about it, and asked him if he saw it, and he said he did.

Ques. State if you saw the captain, before the collision, come on deck.

(Objected to by Mayflower's proctor as leading.)

Ans. No, sir.

62 Ques. State whether you heard him come on deck.

Ans. I heard some one go up on top of the pilot-house, and supposed it was the captain; didn't see him, though. This was after we had passed the wood-dock.

Ques. What signals were you giving during the evening?

Ans. Blowing a single blast. That is all I remember hearing.

Ques. How often were these signals given?

Ans. I don't know the exact time; every five or six minutes, I suppose.

Ques. State whether you heard any signal given to the engineer at or about the time you passed the wood-dock.

Ans. Yes, sir; I think I did. I heard four little whistles.

Ques. What did you understand that signal to be given for?

Ans. I supposed they were given to go ahead.

Ques. Where was this little signal blown from?

Ans. From the top of the pilot-house.

Ques. Before or after the captain came on deck?

(Question objected to by Mayflower's proctor, as containing implication of fact not proven in regard to captain.)

Ans. I think it was before, but I won't be certain.

Ques. State whether the course of the vessel, after passing the wood-dock, was toward or away from the Canada shore?

Ans. It was away.

Ques. How could you tell?

Ans. Well, we lost sight of the shore after leaving the wood-dock.

Ques. Were any fog-signals or whistles given after passing the wood-dock?

Ans. Yes, sir.

Ques. One blast, or two blasts?

(Objected to by Mayflower's proctor as leading.)

Ans. I may be mistaken, but I think it was one blast.

Ques. Did you hear any whistles from any boats below you?

Ans. Yes, sir; I heard two blasts.

63 Ques. Do you mean a double whistle?

Ans. Yes, sir.

Ques. Was the wheel moved after passing the dock?

Ans. No, sir.

Ques. State if you heard any talk between the captain and mate after passing the dock?

Ans. Yes, sir.

Ques. Where were they?

Ans. On top of the pilot-house.

Ques. What was it?

Ans. I heard the mate say they were in the middle of the river. I don't recollect the exact words, but the captain said they were nearer the American shore. This might have been five or six minutes before the collision, and might not have been so long.

Ques. How long was the conversation before you saw the Dove's lights?

Ans. About two minutes.

Ques. How did you make the light of the Dove?

Ans. We saw her port-light; I don't know; it seemed to me I was turned round this way.

Ques. What was the color of the lights you made?

Ans. I don't remember distinctly. We could see her head-light.

Ques. Did you make it over your starboard or your port bow?

Ans. Over our starboard bow.

Ques. How many signals had you heard from the Dove?

Ans. I ain't sure of hearing over one signal; don't remember of hearing any more.

Ques. What was done when you made her light?

Ans. I didn't do anything; the officers blew a single whistle; I didn't hear any orders given; heard a signal to the engineer; don't know how many signals it was, or if it was to reverse or stop; know it was a signal to the engineer.

Ques. Was any reply given to the Dove's whistle?

Ans. No, sir; I don't remember of any.

Ques. Could you tell as to which way the Dove headed after the collision?

Ans. I heard them say she was going towards the Canada shore.

Ques. Could you see the Canadian shore?

Ans. No, sir. Not distinctly. Not then.

Ques. How long did you stay at the wheel?

Ans. Until the collision.

Ques. How long after the collision did you stay at the wheel?

Ans. Not any. I left the wheel at the time of the collision.

Ques. What did you do from that time?

Ans. I acted as lookout until we got to Marine City.

Ques. Where did you stay during the rest of the night?

Ans. I remained on deck.

Ques. State whether you had any conversation with the captain after leaving Marine City.

Ans. I did. He wanted I should remain on board as watchman, and said he would give me $25 a month. He said if they had a trial they might want me as a witness.

Ques. Did you sign articles as lookout?

Ans. No, sir. He said he would do that. That he would put my name down on ship's books as watchman. I remained on board the Mayflower from Detroit to Buffalo and return. I acted as lookout after leaving Detroit. My watch was from six to twelve o'clock after leaving Detroit.

Ques. Where did you stand as lookout in going down to Buffalo?

(Objected to by Mayflower's proctor as relating to another voyage, undertaken several days after the collision took place.)

Ans. I stood on the promenade-deck, forward.

Ques. State whether you signed the protest; and, if so, at whose request?

Ans. I signed the protest at Capt. Woodworth's request.

65 Cross-examined:

I was born in Flint. Am now 17 years old. Resided in Paw Paw since Dec. 17th, 1869. Was at work for my uncle, chopping wood. His name is Charles Kean. He is a farmer. He doesn't live in the village, but one and a quarter miles out, in a S. W. direction, on the main road. He has a farm there. I was at home in Flint about three miles from there before I went to live with my uncle. My father's name is William Glover. He is a mill-wright by trade. He lives on the river road, running N. E. out of Flint. He was living there when I was there last. I first became acquainted with Capt. Gardner about ten days ago, here in Detroit. I came here because Mr. Yerkes came out after me. Mr. Yerkes said he wanted to know if I couldn't come to Detroit. I told him I would. He said they wanted to take my testimony—what I knew about it. That's about all he said. He asked me several questions, wanting to know what I knew about it. I told him what I knew. He didn't say what he would give me. He said he'd give me as much as I could make there chopping wood. I came down with him. Don't know if he got uncle's leave, or made any agreement with uncle about my coming. When we came here we went to Capt. Gardner's house. From that time I went home, and returned here on Tuesday night last. I stopped at Capt. Gardner's house overnight. While at his house I conversed with Mr. Gardner about the collision, and with no other person beside him. I left Detroit next day on the 3 o'clock p. m. train going to Flint. Capt. Gardner took down a written statement of what I had to say. Mr. Gardner took me to Mr. Brown's, one of the lawyers in the case, that day. Mr. Brown took down what I had to say. I remained at Flint from Saturday night to Wednesday morning, (a week ago yesterday.) Then I went back to Paw Paw. Since I returned here on Tuesday morning I have been at Mr. Gardner's house in Detroit. Since

66 that Tuesday morning I haven't spoken a great deal with Gardner about the collision. We would talk about it sometimes at night and at noon. I have not stayed in the house most of the time since Tuesday. Have been down at Gardner's house and around the streets. Since Tuesday last I have conversed with no other persons about the collision besides Gardner and Brown. Since I've been in Detroit I have had no conversation in regard to my pay for coming here except with Capt. Gardner. He told me he would give me $2 a day for the time I was here. Up to this time I have received pay. When I went home before he paid my expenses home, and for my time here he gave me $12.65. He gave me nothing else besides money. He promised me no situation. He promised me nothing else besides money. In chopping wood there was no bargain made. I was to get what the rest of them got. I guess about $15 a month.

Ques. If you were employed to load up and wood up on the Mayflower, and paid your passage-money, why did you do duty as a seaman at all, other than that?

Ans. Why, I done it as a favor, not expecting anything for it?

Ques. What lights does a steamer carry?

Ans. A head-light, a port-light, and a starboard light.

Ques. What color is the port-light, and what color is the starboard-light?

Ans. The port-light is red and the starboard-light is green.

Ques. What were the names of the two lookout-men employed on the Mayflower?

Ans. There wasn't but one until I was employed. I don't know the name of the man who was taken sick, and whose place I took. Charles Glover (myself) was the one lookout, and the man who took sick, whose name I don't know, was the other one. I didn't know of any other lookout besides the one whose place I took.

Ques. Do you know who the lookouts were on the Mayflower on leaving Chicago?

Ans. No, sir.

Ques. After you went into the pilot-house to stand ready to help shift the wheel, how do you know who was on deck and who was on the pilot-house?

67 Ans. I could see down on deck, and I could distinguish the mate's voice from the captain's.

Ques. Did you take the wheel at all that night; take hold of it?

Ans. Yes, sir.

Ques. Who was wheels-man when you took hold of the wheel?

Ans. I don't know his name. I don't remember how many times I took hold of the wheel. I took hold of the wheel because the other wheels-man told me to. I was just by the wheel to help the wheels-man.

Ques. Do you undertake to swear that the master was not on top of the pilot-house when you were in the pilot-house?

Ans. No, sir.

Ques. I call the promenade-deck the next deck above the main-deck. When I saw the mate on the promenade-deck I saw him forward of the cabin.

There is the hurricane-deck, besides the promenade-deck and the main-deck. I did not see or know of anybody being on the hurricane-deck while I was in the pilot-house. When I say I could see the wood dock, I mean you could see not only the lights on it, but also the dock itself. I mean to be understood, not that I saw a light on the wood dock, but a fish light just above the dock. Should judge we went as near this wood-dock as five or six rods. It might have been more. I was in the pilot-house when I saw the wood-dock. I couldn't see all round as well in the pilot-house as you could on the hurricane-deck, because you couldn't look all round in the pilot-house. You could see as well all round, except aft, as well in the pilot-house as on the hurricane-deck. I didn't take notice how many windows there were in the pilot-house. The frames of the pilot-house windows would prevent you seeing as well forward from the pilot-house as you could on the hurricane-deck, unless you stuck your head out.

Ques. What is the signal for slowing an engine?

Ans. I don't understand the signals. Suppose it is two whistles. Don't know, though.

68 Ques. What is the signal for backing?

Ans. I don't know that. I am not acquainted with the signals.

Ques. What is the signal when you wish to pass an approaching steamer on the port hand?

Ans. I don't know. I am no sailor myself, and don't profess to be.

Ques. Do you remember passing an island shortly after entering the mouth of the river?

Ans. No; I don't know as I do.

Ques. Can you tell on which side or in what manner the steamboats collided?

Ans. Yes, sir. We struck the Dove on her port bow. She was running across our starboard bow. Then I think we went ahead and went beyond her, and she came round our stern and went towards the Canada shore. The Dove, when we struck her, appeared to be coming across, (showing with his hands together the course of the vessels.) The Dove was heading rather across the Mayflower's course. The Dove's bows were pointing toward the Canada bank. I think the Mayflower's was heading rather down stream. There was a basin there. You could see the point at time of collision. I don't remember of seeing either shore. When we lost sight of the Dove, I couldn't tell which way she was then going. Could see her lights.

Ques. How long did the regular lookout whose place you filled remain sick?

Ans. He took his place again when we arrived at Detroit and went into dry-dock. But I believe he left the boat before we went to Buffalo. I do not know when he got well. Saw him around next morning.

I know a Mr. Barker by sight and by name. Have seen him since I came to Detroit. Have had no conversation with him. Met him at Capt. Gardner's office.

69 Redirect examination:

Ques. How long before the collision did the mate go from the promenade-deck to the top of the pilot-house?

Ans. I do not remember how long it was. During the evening, while I was in the pilot-house, he would come up there once in a while, and would go down.

Ques. How long after the collision did you see the Canada shore, if at all?

Ans. I don't remember seeing it at all, nor did I see it at the time of the collision.

Ques. You spoke of making a statement to Captain Gardner and to me. Did you make more than one statement in writing?

Ans. No, sir, only one. That was the one I made to Mr. Brown.

Ques. Did the two vessels come together at a right angle, at a less than a right angle, or at a greater than a right angle?

Ans. At a greater than a right angle.

D. The two pencil-marks made by me indicate the way the boats came together.

M.

Ques. When you say watchman, do you mean lookout or something else?

(Objected to as leading.)

Ans. I shipped as watchman.

Ques. Did the $12.65 include anything for expenses, or was it only for time?

Ans. That was for my expenses and my time both.

CHARLES GLOVER.

FEB. 24, 1870.

70 EDWARD MONITON sworn for the Dove.

Examined by Mr. Newberry:

Q. You live in Detroit?

A. Yes, sir.
Q. You are in what office?
A. In the lake survey-office.
Q. You have been there how many years?
A. Four years.
Q. Will you tell us what this map is?
A. It is the representation of the survey of the St. Clair River, according to the plats and original maps.
Q. Enlarged from the original maps?
A. Partly enlarged from the original maps; the notes were taken from the survey.
Q. The three lines that run up and down the edge of the river, first the red line, then the light black, then the bluish line, represent what?
A. They represent the six, twelve, and eighteen feet depths of water.
Q. This red line with an arrow represents what?
A. The true meridian.
Q. Not the magnetic?
A. Not the magnetic.
Q. These green places, partially green, represent what?
A. Woods, the forest trees; orchards are different; they are represented by little round marks; the marshes are represented by little blue lines, with grass put on top so as to represent nature as much as can be.
Q. These black square spots represent what?
A. The buildings on the ground, houses, barns, and everything, everything erected above ground.
Q. And they are laid down from actual surveys?
A. Yes, sir.
Q. These projections from the shore with cross-head are meant for docks, I suppose?
A. Yes, sir.
Q. And the lines represent the lands of the different farms?
A. All the farm lands and the actual fences built on the ground.
Q. A double line represents a road?
A. Yes, sir.
Q. You are not acquainted with the places on the river, personally?
A. I have been up there once; of course once is not quite enough to give any great idea of the place, particularly along the docks.

ALFRED P. TOULUNN sworn for the Dove.

71 Examined by Mr. Brown:

Q. Where do you live?
A. In Detroit.
Q. State where you lived before coming here.
A. On the river St. Clair.
Q. Where?
A. Township of Sanborough.
Q. In Canada?
A. Yes, sir.
Q. Whereabouts in the township—in the village?
A. No, sir; at the upper end of the township.
Q. Can you point out on that map near where it was?
A. (Witness pointing to map.) There is my place; I own it yet; (it is opposite Ricord's marsh.)

Q. How many years have you lived there?
A. About 18—17 or 18 years.
Q. Are you acquainted with the docks and houses on the Canada side, from Saumble up to the neighborhood of St. Clair?
A. Yes, sir; well acquainted with it.
Q. Will you point out now the various docks on the Canada side, from Clay Creek up to Hockin's dock?
A. The first above Clay Creek is Reynold's—no, Gray's; that is Reynold's marked "R;" that is Bowen's, and there is Hockin's light.
Q. Hockin's dock is not down?
A. No.
Q. Will you point out, if you know, the house of Joseph Brown?
(Witness points it out.)
Q. Point out the location of Thos. Gray's house.
A. About there.
Q. State now what these pieces of land are; what kind that is.
A. That is a marsh, and there is timber upon that piece of land.
Q. How heavy?
A. Good-sized trees—regular forest trees.
(These two pieces of land are next to the river on the same side of the St. Clair River, and on opposite sides of Clay Creek, at the mouth of the creek.)
Q. Do you know where Gallagher's Mill dock is?
A. I can't be positive; somewhere at the upper end of Marine City.
Q. Are you one of the libellants?
A. I hold stock in the line.
Q. Were you one of the original stockholders?
A. Yes, sir; in the River and Lake Shore Line.
72 Q. State whether Capt. Gardner and Gallagher are also.
A. Yes, sir, I believe they are.
(On motion of Mr. Brown, all testimony with regard to other stockholders than the witness is ordered to be stricken out.)

JOHN S. FLETCHER sworn for the Dove.

Examined by Mr. Brown:

Q. Where do you live?
A. Clarkston, Oakland County, Michigan.
Q. What is your business?
A. I have been selling goods from Detroit the last number of years.
Q. State whether you were aboard the steamer Dove at the time of her collision with the Mayflower.
A. I was.
Q. Where were you bound from and to what place?
A. To St. Clair, from Detroit; St. Clair was my first stopping-place.
Q. Where were you at the time the Dove left Marine City?
A. Standing near the pilot-house—leaning against it.
Q. On which side?
A. On the American side.
Q. The port-hand side of the pilot-house?
A. On the American shore, going up.
Q. How long did you remain there?
A. I was there from the time they left Marine City until after the collision; I was there previous to going to Marine City—after we left Algonac.
Q. You remained by the pilot-house until after the collision?
A. From the time we left Marine City, I did.

Q. How was the weather that night?

A. Occasionally very foggy—very; but the fog would lift occasionally so you could see; then it would shut all in again.

Q. Will you state on which side of the river the Dove pursued her course after leaving Marine City? State the course by the side of the river.

A. We took right up the bank of the river on the American side.

Q. How far from the American shore?

A. That I can't say.

Q. State how you know she kept the American shore.

A. Because I was standing on that side as we were going up, running near the land just before the collision, stopping the engine.

Q. State at what speed, generally, she appeared to be running
73 up the river—I mean whether she was running fast or slow—relative to her usual speed was it fast or slow, or can you tell whether her course after leaving Marine City was faster or slower than the ordinary speed of the vessel?

A. I thought it was slower.

Q. Whether she was going faster or slower than before.

A. Yes, sir, I supposed they were running slow on account of it being so foggy; that was my idea of it.

Q. How long were you, should you think, in running up from Marine City to the place where the Dove grounded?

A. Do you mean after the collision?

Q. No, before the collision.

A. I thought it was a long while; I thought they were running slow, and I was very glad of it, because I felt a little frightful myself.

Q. How long should you judge it was?

A. I can't say; it seemed to be a good long while—I should think an hour nearly; it might not have been.

Q. Do you know what time the Dove left Marine City?

A. I think it was half past ten—near that.

Q. Did you notice where Capt. Sloan was standing?

A. I did.

Q. Where?

A. On the pilot-house.

Q. State what you could see, if anything, on the shore, at the time you grounded?

A. We could see the shore at the time; that is, the fog seemed to lift about the time we went on, just after she struck; then it shut in again.

Q. (By the court.) There are two instances of grounding; I suppose you mean the one before collision?

A. Yes, sir, that is what I mean.

Q. Do you know how long she remained there before she got off?

A. It wasn't but a short time.

Q. Could you tell whether she came to a dead stand-still?

A. I thought very near; I could not say, of course; very near.

Q. After she slid off. Can you tell generally how much her course varied from the course she pursued when she came out when she grounded—do you know how much she turned?

(Objected to.)

Q. At the time you grounded could you see the shore?

A. Yes, sir.

Q. Distinctly?

A. Yes, sir.

Q. Now, whether you could form an estimate of how much variation

there was from the previous course of the vessel, from the observa-
74 tion of the shore, state whether you could form an estimate as to the change of course if any after the vessel grounded.

A. I thought she was keeping as near up to shore as she could—that was my idea of it.

Q. Now, state whether you saw the American shore or any object on the shore after the vessel that is stopped there, before or after the collision?

A. Yes, sir; after, I did.

Q. What did you see?

A. I saw the American shore.

Q. Just after the collision?

A. Yes, sir.

Q. How long after?

A. It wasn't but a short time; the fog seemed to lift right up so you could see.

Q. Before or after the collision?

A. Just after.

Q. What did you see on shore?

A. I could see the trees and the bank.

Q. How far did the vessels appear to be from the shore?

A. My supposition was that we were near the American shore—what made me think so was Capt. Sloan said to some man standing with him, says he, "there is a light on Ricord's dock, and I got my eyes on that light.

Q. Was that before or after?

A. Just before the collision.

Q. But the shore you saw just after?

A. Just after.

Q. Could you see the American shore immediately after the grounding, when the boat started from the grounding?

A. I can't say that I could.

Q. Not until the collision?

A. Not until the collision.

Q. Will you state to the court, from your own observation, at what angle the vessel struck—how the Mayflower struck the Dove?

A. I was looking right a head. (I will tell you as near as I can.) (Witness then takes the two models.) This is the Dove and this is the Mayflower; I thought in the first place she was going to strike the bow almost straight.

Q. Where were you standing?

A. On this side of the pilot-house, the American shore of pilot-house, or the wheelsman's house.

Q. How did you run as to speed, that is you being at liberty to judge only from your own observation of what the speed of the vessel had been while on her trip from the time you grounded until the collision?

A. I thought she was running slow; that was my idea of it.

75 Q. When you first saw the Mayflower's light, can you tell on which side you were, the left-hand or right-hand side, or dead ahead?

A. I thought she was as near dead ahead as could be, just saw it and that was all before she struck.

Q. How long did you remain outside?

A. After the collision?

Q. Yes.

A. Until she grounded—went aground on the Canada side, then I went to work to help get off the passengers.

Q. How long were you from the collision, should you judge, until the Dove grounded on the Canada side?

A. We were some little while, some six or eight or ten minutes.

Q. State whether the Dove was in motion at the time—whether her engine was working?

A. No, sir; not, I think, when the collision took place.

Q. After the collision, from that time until she struck the shore?

A. I heard the captain sing out to some one, calling him by name, "work the engine." He had rung the bell and could not make that answer, I thought, and then he sung out by name to some one to work the engine.

Q. What whistles, if any, did the Dove blow from the time she left Marine City?

A. She was blowing whistles all the time; two, I think, in succession.

Q. You mean whistles of two blasts each?

A. I think so; yes, sir.

Q. State how many whistles, if any, you heard from the Mayflower.

A. About the time she struck, I think I heard three.

Q. How near was she then?

A. Right on to us.

Q. Can you tell whether the heading of the Dove was stopped—her headway was stopped at the time of the collision—could you tell?

A. I could not.

Cross-examined by Mr. Russell:

Q. Where do you sell goods in Detroit?

A. I was selling at that time for B. De Forest & Co.

Q. Liquor-merchants on Randolph street?

A. They were at that time; they are now on Jefferson avenue.

Q. In what business are you at present engaged?

A. I have not been for two or three weeks doing much of anything.

76 Q. You were traveling for De Forest and Company at that time?

A. I was.

Q. Where have you been for these two or three weeks?

A. Home, within the last two or three days here in Detroit—two days.

Q. When were you first requested to come here to give evidence?

A. I don't know as I could answer; it was soon after the collision that I was talked to by Sloan—my statement was given at that time; since then I have not seen any of them until this morning.

Q. You were talked to by Sloan?

A. He came there to the store, knowing Coller, the express-agent, who knew I was aboard the boat.

Q. Do you mean a written or verbal statement?

A. No, sir; a written statement, I think.

Q. Who prepared it?

A. Mr. Moore, I believe.

Q. You gave him a written statement prepared by Mr. Moore?

A. He came over to the store and wished me to go over to Mr. Moore's office; I went, and he wanted to know what I knew, and I sat down and gave him a detail of what I knew.

Q. How long was that after the collision?

A. I won't say whether a month, or two months, or whether it was two weeks or not.

Q. Do you come here now from Clarkston on a subpœna?
A. No, sir.
Q. How happened you to come?
A. I came down on business for myself.
Q. You didn't come here with the intention of being a witness?
A. No, sir; I didn't know, until I picked up a paper at the Franklin House, that there was a suit in vogue with the Dove and Mayflower, and I accidentally run across Mr. Gardner in the street and he asked me to come.
Q. Have you refreshed your recollection since you met him by reading the paper you gave to Mr. Moore?
A. I have not read the paper; no, sir.
Q. Then you speak entirely from memory of what occurred as it took place then?
A. As near as I could.
Q. Haven't refreshed your memory in the mean time?
A. I thought of the thing, of course, since I was talked to to come up.
Q. Haven't read the paper?
A. No, sir.
77 Q. Have you heard it read?
A. Yes, sir.
Q. Why didn't you say so when I asked you if you had read it. You knew what the object of the question was; why didn't you then say you heard it read?
A. I don't know.
Q. You drew a distinction between reading and hearing it read?
A. I heard it read.
Q. You made a distinction in your mind when I asked you whether you had read it?
A. Yes, sir.
Q. Who read it to you?
A. This gentleman sitting here; I don't know his name.
Q. What colored light does a steamer carry on her starboard side?
A. I can't tell.
Q. How many times have you ever ridden or been transported on a steamer on the river here, up or down?
A. Only this once; yes, twice, since the Grand Trunk road was completed; before that I was quite often from here to Port Huron—that was the first time in seven or eight years, I guess, and I have been once since.
Q. At the time of this accident, then, you hadn't been on a steamboat for seven or eight years?
A. No, sir; I presume it may be eight or ten.
Q. And you were entirely unacquainted that night with the movements of steam-vessels?
A. Yes, sir; I knew when they were going.
Q. That is about all, wasn't it?
A. Yes.
Q. I think you said you didn't know the port side from the starboard side.
A. I don't.
Q. You say that you stood by the pilot-house all the time from Marine City to the time of the collision?
A. I did.
Q. You say that you left Marine City about half-past ten and the collision occurred a good while after?

A. I think it was just half-past ten. I know when we left I says to Coller, "What time are we going to get to St. Clair?" Says he, "We will be there in about an hour, if it ain't too foggy." We then said it was half-past ten o'clock.

Q. Allow me to ask why you remained outside?

A. I don't know; not being accustomed to steamboating, I got a pipe in my mouth, and stood there smoking and kind of looking.

78 Q. How near to Capt. Sloan did you remain during that time?

A. Capt. Sloan was above me.

Q. You were on the promenade-deck and he on the pilot-house?

A. Yes, sir.

Q. How far; as far as from you to the judge?

A. I should think a little farther.

Q. Could you hear what he said distinctly?

A. I thought I could.

Q. Can't you tell what he said when you ran aground; before the collision, I mean?

A. I don't know that I could.

Q. Can you tell what he said to the wheelsman when you run aground?

A. He was giving orders to the wheelsman, but I could not tell what.

Q. It was all Greek to you?

A. Yes, sir.

Q. You remember, however, what Capt. Sloan said about seeing a light on Ricord's dock?

A. I think he made the remark to some man standing by his side; I thought so, and he says there is a light on Ricord's dock.

Q. How long was that after you were aground?

A. It was but a short time.

Q. How happened you to remember that, and nothing else which the captain said?

A. Oh, I remember considerable that he said; but whether it was for the boat or not, I don't know; I could hear him say starboard and larboard, and hear him talking to his men in the wheel-house, but I didn't know what it meant, whether it meant for him to go right or left.

Q. When Capt. Sloan said to the man beside him there was a light on Ricord's dock?

A. I saw the dock, but I could not say whether it was a light on the dock or on the steamboat; I thought it was on the dock, by what he said.

Q. What is your own opinion as to whether that was the light on the steamboat or a light on Ricord's dock; you say you can't tell which light it was?

A. Because it was so quick after the collision.

Q. I ask you your opinion as to which it was.

A. I don't know.

Q. I ask you your opinion, and I want it, whether it was the steamboat-light, the light of the Mayflower, or a light on the dock?

79 A. I was trying to get my opinion so I could so, because the minute I saw the light the collision took place; the captain said there is a light on Ricord's dock, and about that time there was a collision, and so I don't know whether I can say whether it was on the dock or on the steamboat; I didn't see it afterward anyhow; I saw the steamboat-lights after.

Q. Now, I repeat that I ask you your opinion as to whether the light which you saw, and Capt. Sloan said was on Ricord's dock—said so to

his companion beside him—whether, in your opinion, that light was on Ricord's dock, or was the light on this boat which came down on you that night?

A. My opinion is, it was the boat's light.

Q. What order when Capt. Sloan said that that was a light on Ricord's dock—what order did he give to his wheelsman; what did he say?

A. He said something. I don't know what it was; either starboard or larboard, or something to that effect; I can't tell which.

Q. Didn't he say port?

A. That might have been; I don't say, because I didn't know what they meant by it; therefore I didn't pay any attention.

Q. Did you observe whether there was any variation in the course of the vessel?

A. I did not.

Q. I mean before the collision.

A. It was very foggy until just that moment.

Q. And you could not tell?

A. After we left it was quite foggy.

Q. After you grounded it was quite foggy?

A. Yes, sir.

Q. Did you feel the vessel's keel rub against the bottom?

A. I don't know that I did.

Q. How did you know she grounded, then?

A. I felt her sway over—kind of roll over.

Q. Kind of hit?

A. Roll the same as you would roll a cask over.

Q. Did you become aware from your own observation, without regard to anything anybody said, that the vessel had grounded?

A. I think so; I didn't know she ran aground hard—I know she kind of tipped up—tipped over, as she ran on there.

Q. How did you form that opinion—from the feel of the boat?

A. Yes, sir, as she was rolling over.

Q. How did she get off; that is, did she go forward, sideways, or backwards?

A. I think she backed off there instantly, and then went on forward.

80 Q. How did she turn her nose; you say you could see the shore?

A. At that time, yes, sir.

Q. In which direction did she turn?

A. Her nose was right up river.

Q. You can't remember what was said by the captain, what orders he gave?

A. I can't; it was some of those orders; I can't say what one.

Q. How soon after you grounded did you lose sight entirely of the shore?

A. A very short time; we hadn't more then backed out before the fog close' in on us.

Q. And then where you went to you could not tell?

A. No, sir; only my supposition we were going up the river.

Q. You could not know anything about it?

A. No, sir.

Q. Now, you say, after the collision, you saw the American shore?

A. I did.

Q. Now, I want to know whether you can tell anything more than you saw some land?

A. That is what I mean.
Q. That is all you mean?
A. Yes, sir.
Q. Do you mean anything more than this?
A. I mean I saw some land.
Q. When you say you saw the American shore you mean you supposed the land you saw was the American shore; that is all, ain't it?
A. I supposed so on account of its being higher than on the Canada shore; that was my supposition.
Q. All you can testify is, you saw some land. I want to know your grounds of belief that it was the American and not the Canada shore.
A. My only grounds was on account of its banks being higher when the fog lifted; I have been up and down there many a time, and I supposed it was the American shore because higher.
Q. I was going to ask you whether you were familiar with the ground there.
A. Yes, sir; I have driven up and down for years with the horse and buggy.
Q. You judged by the high bank, from the bank by its height and nothing else, that is all?
A. That is all.
81 Q. Did you have any opinion at that time as to whether you were very close to that shore when you first saw it after the collision? In the first place, about how long after the collision did you see some land?
A. I guess it was, perhaps, half a minute while the Mayflower was passing down one side, and when she struck us I cast my eye over to see where we were, (the clouds of fog had lifted;) when she struck us she turned round, and then come right down along our side, and raked down; then I saw some land.
Q. When she raked down your side?
A. Yes, sir.
Q. At that time did you form any opinion of the distance of that land from your vessel?
A. I could not say that I did.
Q. Can you tell which way you looked to see the land, whether from the nose of the boat, or whether over the right-hand side or left-hand to see that land?
A. I looked on the left-hand side.
Q. Where were you then standing?
A. I was then near the bell; I left my position at the pilot-house after she struck; I was then standing in front; there was a man had been standing in front of the pilot-house, and I shifted my position there to see.
Q. Which side of you at that time was the Mayflower raking you; you say you looked over the left side, and at the time the Mayflower was passing. Now, was the Mayflower passing on that side or the other?
A. On the other; as she struck us there, she came right round on the side that way.
Q. This is the Mayflower, (illustrating with models.)
A. Yes, sir.
Q. Which way did you look?
A. On the left-hand side.
Q. Across the Mayflower?
A. I might have been mistaken about that.
Q. Please fix that.

A. She struck us there; turns round, and came right down alongside of us that way.

Q. Now, place the boats side by side, and tell us which direction you looked for the land?

A. I looked over, as I said before, on the left-hand side.

Q. Do you remember that when you looked on the left-hand side the Mayflower was on the same side?

A. She was there a very short time, for she was moving all the time.

Q. Whether you looked over the same side she was on?

A. I think so.

Q. On which the Mayflower passed?

A. Yes, sir; as she raked down alongside.

82 Q. When you grounded after the collision, did you hear any of the officers of the boat ask which side of the river they were on?

A. I heard Capt. Sloan say we were on the Canada side when we were aground for good.

Q. To whom did he say it?

A. To some one by there—I don't know who it was—I think it was Capt. Sloan said it.

Q. I would like to have you be sure, if you can.

A. Some one said we were on the Canada shore. It lightened up soon after we went aground. The moon came out very nicely, and the fog cleared away a short time after. Well, we got the passengers off before it cleared off, and then got them back on the boat again.

Q. After the collision, which direction did the Dove take? Backwards, forwards, or sideways, immediately after the collision—after the blow?

A. I thought she went forward. Captain Sloan gave orders to his engineer.

Q. Directly after you were hit, you think she went forward?

A. While we were hitting. I think our engine wasn't working when we hit—the engine of the Dove.

Q. When the boat became disentangled, which way did you go; backwards, forwards, or sideways?

A. I thought off to the side a little.

Redirect:

Q. Which side?

A. I thought she shoved us off toward the American shore again.

Q. Now, state your opinion as to whether the shore you saw immediately after the collision was or was not the shore upon which you subsequently grounded, finally brought up; was it the Canada shore?

A. Yes, sir.

Q. Now, state whether the shore you saw immediately after the collision, as you say, was the same shore or not upon which you subsequently grounded.

A. I think not.

JOHN WESTAWAY sworn for the Dove.

Examined by Mr. Moore:

Q. State your age, place of residence, and occupation.

A. My age is 32; I live in Detroit; I follow engineering.

Q. How long have you been an engineer?

A. About twelve years.

Q. How long have you had engineer's papers for vessels?

A. About eight years.

83 Q. Were you on the Dove on the night of the collision with the Mayflower?
A. Yes, sir.
Q. Whose watch was it?
A. It was my watch.
Q. As first engineer?
A. Yes, sir.
Q. About what time did you go on watch?
A. About six o'clock. It might have been a few minutes after—about six.
Q. About what time did you leave Marine City that night?
A. I don't know exactly the time we left Marine City.
Q. As near as you can?
A. It must have been somewhere in the neighborhood of ten o'clock.
Q. About how much steam did you carry that night?
A. About forty pounds.
Q. What was your general amount?
A. Forty-five pounds was what we generally carried.
Q. How were you running after leaving Marine City as to speed?
A. Running slow; in check, but not close; but she was running slower than her usual speed.
Q. What was the first signal or bell you got after leaving Marine City?
A. Three bells.
Q. Indicating what?
A. Check.
Q. What next?
A. Then I got one bell, to stop her.
Q. State whether these signals were obeyed.
A. Yes, sir; they were.
Q. What next?
A. The next signal was to go ahead again.
Q. How many bells?
A. One bell.
Q. How long after the bell to stop before the bell was rung to go ahead again?
A. I don't think it could have been over a minute; it might have been a little longer. It was a very short time.
Q. State whether there was any perceptible change in the motion of the boat between the time of stopping or going ahead again.
A. Nothing that I noticed. She might have rolled over. I don't know. I didn't notice anything of the kind.
Q. Were those the only signals given to you at that time?
A. That was all.
84 Q. After going ahead state what was your speed.
A. He rung another bell after I started, and after the one bell he rung four bells and I opened her out a little, very little, and I left her under a check; she was working under a check.
Q. Why did you leave her under the check when the four bells were rung?
A. For two reasons: in the first place she was a boat that, if you open her right out, she would not go at all; she would squat right down in the water and play round, and would not make more than four or five miles an hour, to work the engine as fast as she could work. You have to open her out gradually; probably she would run a mile before you

could open the engine out so that the boat would make decent time, run along at her full speed.

Q. That is one reason; what was the other?

A. The other reason, it was foggy weather.

Q. When did you receive the next signal, and what was it?

A. After the four?

Q. Yes.

A. The next was check.

Q. The four bells?

A. That was to back her on—that is, I run her to suit myself.

Q. Until that signal how had you worked her?

A. Which signal?

Q. The four.

A. By hand.

Q. On receiving the signal you hooked her on?

A. Yes, sir.

Q. Where were you when you got the next signal after the four bells?

A. I was in the engine-room; I had the throttle in my hand; I had my hand on the throttle-valve.

Q. Standing by the engine?

A. Yes, sir.

Q. What was that signal?

A. Three bells was the first after the four.

Q. Indicating what?

A. Check.

Q. How long a time had elapsed from the ringing of the four bells before you got the three bells?

A. Well, I would not say exactly; might have been three or four minutes—something like that—a very short time.

Q. During that time what had been the relative speed of the boat, between the four bells and the three bells?

A. Well, as far as I am capable of judging under the circum-
85 stances, I don't think the boat could have been going over five miles an hour at that time, because she was a boat picked up her headway very slowly.

Q. After getting three bells what was the next signal?

A. One bell, to stop.

Q. What next?

A. Two bells, to back.

Q. State what you did on receiving those three bells respectively.

A. I stopped the engine and backed her as hard as I could, because, the weather being foggy, I felt as though probably there was a collision at stake, and I backed her as hard as I could back her.

Q. State how many turns had been made, if any, before the vessels struck.

A. I should judge she made as many as three turns before they came together; turns backward.

Q. The Dove is a side-wheeler?

A. Yes, sir.

Q. In making those three turns what effect would it have upon the headway of a vessel going up stream?

A. At the rate she was going, in my opinion, it ought to about stop her.

Q. How was she as to stopping to be compared with other propellers of her size?

A. Very good.

Q. What were the relative sizes of her wheels?
A. Twenty-six feet.
Q. Compared with other steamers?
A. About ordinary.
Q. After the collision what was the next signal you got?
A. One bell.
Q. How long after?
A. I don't know; it might have been probably a couple of minutes something like that.
Q. What did that mean?
A. To go ahead.
Q. How long did you continue backing her after the collision, or about the time of the collision; you received three bells to back?
A. Yes, sir.
Q. Now, how long did you continue backing?
A. It don't take but a very short time to turn an engine three times.
Q. After she struck there were three turns?
A. Yes, sir.
Q. How long did you continue backing?
A. I don't know as I understand you.

86 Q. The question is, you stated you got the bells to stop and back; you had backed her and got three turns on her before the two vessels came together; now, did you continue to back her at that time after the two vessels came together?

A. No, sir; well, I kind of stumbled away from the bar; I didn't think they were coming together exactly; didn't guard myself against it, and of course it brought me a little over, and I didn't work her again.
Q. You stopped there?
A. Yes, sir; right there.
Q. And remained stopped until you got the bell to go ahead?
A. Yes, sir.
Q. What was the next signal after getting the bell to go ahead?
A. Capt. Sloan came back to the engine-room and says, work her ahead as fast as you can; we'll get her on the bank if we can.
Q. Did you?
A. I did; I threw off the cuts and made 40 pounds of steam do all it could do; I thought if the engine was liable to break down this was a first-rate time for her to do it.
Q. How long did she run before you came to the ground, fetched up?
A. Well, it was a pretty excitable moment and it is pretty hard to tell exactly, but I should think she run plenty long enough to cross the river, probably five minutes—four or five minutes.
Q. State whether the engine continued to work after she struck?
A. It did.
Q. After the first bell was rung to go ahead, after you got the bell to check and stop, and then to go ahead again, state where you were from that time until the bell was rung again to check.
A. I left the engine, and my fireman was standing close by, and I says to him, if the bell rings stop her, and I stepped to the gangway.
Q. Which one?
A. The forward gangway on the port side.
Q. How far was that?
A. I don't know, it must be 35 or 40 feet.
Q. How long were you gone there?
A. I don't think over a minute.
Q. Were any bells or signals sounded while you were there?

A. No, sir.

Q. Where did you go then after going to the gangway?

87 A. I just looked out and then went right straight back. I went there to look to see if I could see where we were, and also to see how thick it was, because if it was not very thick I would open her out and let her go faster, and if it was thick I would let her run along as she was, (because I left her under check,) and then I went right straight back to the engine-room; I could see a glimpse of the shore, and I made up my mind by that it wasn't so bad, and when I got back I was in the act of opening her out, had my hand on the throttle-valve, when the bell gave three bells to check her, and I checked her a little closer.

Q. You didn't open her out?

A. No, sir; I didn't move her.

Q. When you got that bell to check on your return, what did you do?

A. I shut the throttle as tight as I could, and run down the cuts.

Q. When you went to the gangway what did you see, if anything?

A. I could see a glimpse of the land, that was all, and I turned right around and came back.

Q. Which shore would that be?

A. That was on the way up the river, that would be the American shore.

Q. Are you pretty familiar with the shore along there?

A. Nothing particular; I have run up and down there.

Q. For how long?

A. The last ten or twelve years.

Q. How far was the land off at that time?

A. I don't know for certain; it could not have been far, because if it was far I could not have seen through the fog there was; it was close by.

Q. How long from the time you got the order to hook her on, or the four bells, before you got the order of three to check—how long a time elapsed?

A. Well, it could not have been over two or three minutes, something like that, it was a very short time, I can't tell now.

Q. How long a time elapsed from the time you saw the shore until you got the order to check again?

A. Just as soon as I could get back; it could not have been but a very short time—it could hardly have been a minute; I only walked to the gangway, looked out, came right back, had my hand on the throttle, just got hold of it, I hadn't had time to open it any before three bells came.

Q. I understand you to say you stood at your engine from the time of the collision until she grounded?

A. Yes; I never left the engine-room.

Q. Didn't look out at all?

88 A. No, only I came to the door of the engine-room and looked down to see how fast the water was coming into the hold; I ordered the second engineer down to open the bilge-injection; he was turned in, so I ordered the fireman down; I had almost to drive him down after I had ordered him twice; he didn't want to go down; the second engineer was turned in, and I could not go to call him, so I had to use some pretty harsh words to get him down at all.

Cross-examined by Mr. Russell:

Q. Did you back where the vessel grounded prior to the collision?

A. No, sir.

Q. Have you any knowledge that you ran into Ricord's Marsh and backed out?

A. I don't know anything about it at all; only what I have heard, that is all.

Q. Did you have an order to back any considerable time before the collision?

A. Well, just about time enough to make, as near as I can judge, about three turns with the engine; I don't say exactly, but just as near as I can get at it; in my opinion, she made that amount.

Q. Was that the first order to back you got after leaving Marine City?

A. That was the first order to back after leaving Marine City.

Q. And that was immediately before the vessels came together?

A. Yes, sir.

Q. When you got the order to run her to suit yourself, that meant full speed if you chose to let her out?

A. Yes, sir.

Q. What is her full speed?

A. Well, I don't know exactly what it is, but I know she is toddling along pretty well when she is making 18 or 20 turns a minute.

Q. Would she make 13 or 14 miles an hour?

A. Yes, sir.

Q. More than that?

A. I guess she can be crowded to 14 easy enough; that is, if you want to give her all she can do.

Q. Why did Capt. Sloan come down to the engine-room after the collision?

A. That is all he said; I don't know why he came down, only he said to hurry her along as fast as I could and we'll get her on the bank; says he, I am trying to get her on the bank; work her as strong as you can.

89 Q. You did work her strong then?

A. Yes, as strong as I could work her.

Q. She was then at a stand-still, was she?

A. The engine was standing still before the bell rung to go ahead; he rung a bell to go ahead, then he came down.

Q. What is the fact of the vessels moving through the water then?

A. I don't know; I was in the engine-room all the time.

Q. You have no opinion on the subject?

A. No, sir; what was outside I know nothing about; what I know is what was going on in the engine-room.

Q. You think she run four or five minutes before she fetched up?

A. I should judge so, as near as I can form an opinion; I think it was as long as that, any way; then I saw the water getting very lively into the hold, and I thought it about time to be getting out somewhere.

Q. You think, with a hole stove in her bow as large as that was, in five minutes she could cross the St. Clair River?

A. Yes, sir; she was not making water very fast; she had a bulk-head to keep the water back, so it could not come in the full size of that hole in her bow; the propeller shoved the starboard side of the boat back from the end of the bulk-head a little, and the bulk-head itself was tight, so she had not quite that amount of leak.

Q. Would not that have considerable effect upon her speed?

A. It would to a certain extent, of course; by the time she got over she worked very heavy.

Q. Suppose the boat was standing still when the captain came down to the engine-room, you say it takes a good while to start off?

A. She is slow when you open her out.

Q. In view of the fact, suppose she was standing still, in view of the fact that it takes a good while to start her, and in view of this big hole, would not her speed be much slower than at ordinary times?

A. I don't think it would, because she started so soon after the collision, because we were under headway before I saw the water up to the fire-hole; the engine was working ahead, or just as I saw it at the fire-hole; then the signal was given to work her ahead.

Q. With that hole in her, and starting slow, at what rate per hour do you think she run before, as you say, you fetched up?

A. I could not say.

Q. You stated before, your opinion was she was running only four or five miles an hour at a certain point?

A. She was checked right down then.

90 Q. Haven't you any opinion now—with that hole in her and the water gushing into her, can you pass an opinion with regard to her speed, about—was she running two miles, three miles, or one mile, in your opinion?

A. When she started off she might have been running that or more; I think when she started off she was running more than that.

Q. Do you know which bank you fetched up on?

A. On the Canada bank.

Q. As you proceeded after the collision, didn't she keep getting slower?

A. Yes, I suppose she did. I didn't go out to see. The engine worked right along; got a little loggy.

Q. How do you know you fetched up on the Canada shore?

A. Because after we fetched up I went out and looked out; I ought to know, I was there two weeks in the water.

Q. Did you hear Captain Sloan or any of the officers ask which bank they were on?

A. No, sir; I didn't hear anything at all from any of the officers about the boat.

Q. Didn't hear that discussed?

A. No, sir.

Q. Before you went out and looked, which shore did you suppose you were on?

A. I didn't form any idea. I was satified that the capt. said he was going to get on the bank. I didn't care whether it was the American or Canadian shore.

Q. You had some supposition; you could not have been without some supposition on the point. Now, what was your supposition as to which bank you were on before you went out and looked?

A. Do you mean after the collision?

Q. You say you fetched up on the Canada bank; you say you know, because you went out and looked. Now I ask you, before you went out and looked, what your impression or supposition was as to which bank you fetched up on after the collision?

A. I was satisfied at the time of the collision we were toward the American shore; and after that I formed no opinion, never thought anything of it, because I had other things occupying my mind more essential than that.

Q. That is not an answer?

A. I can't answer it; it is impossible.

Q. You know you fetched up on the Canada bank. Now, before you went out and looked, had you any impression or supposition as to which side you fetched up on?

A. No, sir; not to my recollection.

91 Q. Now, when you found you were on the Canada bank, did you feel any emotion of surprise that you were not on the American bank?

A. No, sir; I did not.

Q. Did you alight where you expected to?

A. I didn't expect anything about it. This thing never entered my mind; my mind was on the engine.

Q. Your mind was getting ashore, too.

A. Yes, sir.

Q. About a minute before that you had a glimpse of the American shore; now where did you naturally think your were going to fetch up, or didn't you have any thought about it?

A. No, sir; I can't answer what I didn't think about.

Q. You say, then, that before you went out and looked, and found out which shore you were on, you had not any impression as to which shore you were on?

A. I don't know really that I went out for that purpose particularly.

Q. You had to go out, and found out you were on the Canada shore?

A. Yes, sir; and if I ain't mistaken—it strikes me forcibly now—I asked one of the men where we were; that was the first I thought of anything of the kind; I won't say positively I said that; it strikes me that I did.

Q. The point is, before you asked where you were, or found out, did you suppose you were on the American side?

A. I don't remember thinking anything about either shore.

Q. Your mind was a blank on that subject?

A. Yes, sir; it was on my business. If I had not anything on my mind perhaps I might commence judging how I might get ashore.

Redirect by Mr. Moore:

Q. State whether or not the engine was working when Captain Sloan came there?

A. She was.

Q. Was that after the collision?

A. Yes, sir; that was after he rung the bell.

Q. How long had it been working?

A. I can't say; it could not have been but a few moments.

Captain JOHN A. SLOAN sworn for the Dove.

Examined by Mr. Moore:

Q. State your age, residence, and occupation.

92 A. I will be 37 the 16th of next June; my occupation is a mariner; been in that business about 25 years; my residence is Detroit.

Q. How long have you been master of a vessel?

A. About 20 years.

Q. Of what waters and what class of vessels?

A. Of Lake Erie, Lake Huron, and these rivers, and a part of Lake Superior.

Q. Of what class of vessels?

A. The biggest of our steamers, large and small.

Q. How long have you been almost exclusively in the navigation of the Detroit and St. Clair River as master?

A. What do you mean by exclusively—in running the route I was running to Toledo and Sandusky, on the rivers.

Q. How long were you on the Detroit River?

A. I was towing in these two rivers, Detroit and St. Clair, steady for six years.

Q. How long had you been master of a passenger-steamer on the river?

A. Fifteen years.

Q. You sailed the Pearl how long?

A. Thirteen years.

Q. Master and sailing-master?

A. Yes, sir.

Q. And the Dove?

A. Two years—all one year at least, and a part of the second season.

Q. How long were you upon the route upon which she was running at the time of this collision?

A. From the opening of navigation that year.

Q. How long had you been on that route?

A. I had been with her from the spring before.

Q. What was you sailing the previous year?

A. The Pearl.

Q. On the same route?

A. No, sir.

Q. What was your route at the time of the collision?

A. From Detroit to Port Huron—a trip a day.

Q. How long had you been running on that route a trip a day?

A. I can't say exactly, I think about a trip a month.

Q. Didn't you run it the preceding season?

A. Not a trip a day.

Q. How?

A. A trip every other day, running through from Forestville to Toledo.

Q. The preceding season of 1868 you run from Forestville to Toledo?

A. Yes, sir.

93 Q. And run through every other day?

A. Every day—down one day and up the next.

Q. You were master of the Dove at the time of her collision with the Mayflower?

A. Yes, sir.

Q. What time did your watch commence that night?

A. Well, I don't know about the watch; I took the boat from Detroit, and as soon as she was all ready the mate took charge of the deck and went back aft, and I went up on the pilot-house, and I was there up to the time of the collision.

Q. What time did you leave the flats that night?

A. I can't remember.

Q. Was it dark?

A. It was just about dark, sir; not quite.

Q. Did you touch at Algonac?

A. Yes, sir.

Q. Recollect what time you left there?

A. I don't—I didn't leave the pilot-house at all; it was a bad night, and I didn't have any opportunity to look at the time or ask anything about it.

Q. Where did you touch after you left Algonac?

A. At Marine City.

Q. Did you touch at Baubese Point?
A. No, sir.
Q. Do you recollect what time you reached and left Marine City?
A. I don't.
Q. About what time did you leave Marine City?
A. I suppose it would be about ten o'clock—I didn't ask anything about it, but we were late getting to Marine City.
Q. Why?
A. On account of fog.
Q. How long had the fog existed there?
A. There was a very thick fog then at Marine City and all the way up the river.
Q. How long had there been any fog?
A. We got into a very thick fog along at the flats, and I supposed we would have to come to anchor. There was a vessel lying there we had passed in the morning coming down, and I asked the captain if he lay in the same place, and he said he hadn't moved away. I had put her nose for the land, but probably five minutes after it cleared up perfectly clear, then we had no fog until after we got above Sherwood.
Q. Where is that?
A. About five miles from the flats—between four and five miles.
Q. How far below Marine City?
A. I suppose 20 miles.
94 Q. Then how was the fog at Marine City?
A. At times it would come down very thick, then light up again; when I got to Marine City it was very thick; before I left it had lit up again so you could see the land.
Q. Where were you bound on that trip?
A. Port Huron.
Q. How much did it light up while at Marine City?
A. So you could see both shores.
Q. How long were you there?
A. I don't think to exceed 15 minutes.
Q. Discharge any cargo?
A. Yes, some.
Q. State what was the condition of your boat that night, as to working.
A. She was in good working order.
Q. What was the condition of your engine?
A. Our engine worked the same as usual—all right.
Q. What was your crew?
A. We had a full complement of men and officers.
Q. How many?
A. About 23, I think, all told.
Q. Where were you when you left the dock at Marine City?
A. On the pilot-house.
Q. Who was with you, if any one?
A. A young man by the name of Donelson.
Q. Where was he stationed?
A. Up on the platform of the pilot-house with me.
Q. Who was your lookout that night?
A. A man by the name of Campbell.
Q. Where was he stationed?
A. Forward of the pilot-house, on the promenade deck.
Q. How far from the stem?
A. I should think about 30 feet.

Q. Is that the usual place?

A. It is on a boat of her class; I mean he can't get any nearer the stem on that deck; if the deck extended clear forward, he could get further forward.

Q. Is that the best place to see for lookouts?

A. Yes, sir.

Q. How far were you and Donelson above him?

A. About between nine and ten feet.

Q. Above him?

A. Yes, sir.

Q. Why did you have a man up there besides yourself?

A. He was acting in place of the second mate.

Q. Why have him up there?

A. In thick weather, when I carry a second mate, I always carry him up on the pilot-house, so he can take the bell-rope and give his
95 attention to the whistle, and I would give my attention to the bells, and at the same time assist in looking out.

Q. So you have a lookout from two points of your vessel?

A. Yes, sir.

Q. One was the highest point and the other lower down?

A. Yes, sir.

Q. State how you run after leaving Marine City.

A. Our dock is near the upper part of the town, and at the time we left Marine City, it was clear enough so you could see clump of woods up at Ricord's dock, and at the same time you could see the land over at Bury's dock, and I shaped her course and headed her right along there. I had a light in her bin'acle.

Q. Bury's dock is on the Canada side?

A. Yes, sir; there is a curve in the river, and in running straight up from Marine City to Ricord's you pass nearer to Bury's than you do to the American shore, and we went in close at the upper end of the town, and headed off inside of Ricord's dock. I asked the man at the wheel how he was heading, he said *no* (north;) told him to keep her so; at the same time I looked down at the compass and saw she was heading north.

Q. You could see the compass from the top of the pilot-house?

A. Yes, sir.

Q. Who was the wheelsman?

A. Robinson.

Q. A good man at the wheel?

A. Yes, sir.

Q. What is his given name?

A. I think his name is Albert, or Alfred, I ain't sure which.

Q. How would that course run you, as to Ricord's dock, by your compass?

A. A little inside the dock.

Q. State after giving your order to keep her so, what was your next order?

A. There was no other order given without it was to the engine.

Q. Did you speak to the wheelsman?

A. No, sir; he kept her so. It shut down thick a short time after that, and got very thick; that existed until we brought up on the bank. We didn't fetch up on the bank, but until she touched the bank away down in the bight of the bay.

Q. State what you did when she touched the bank, or came near it, as you supposed.

A. Stopped her—told him to port.

Q. State whether the signal was given to back or not.

A. No, sir.

Q. No order given to back?

A. If she is getting along near the bank; for instance this is the bank, and we were on the left side, it would take the water from under her, and she would heel down; as soon as she heeled down, I stopped her and put the wheel to port, and she swung off a little; I then asked the wheelsman which way she was heading; he answered
96 north-by-east; I let her swing as much as I thought she ought to swing.

Q. Now go on and state briefly what took place up to the time of the collision.

A. We then went ahead; I signaled with the engineer to go ahead and keep her at that; I was giving my attention to the American bank; I could see it; I was looking on that side all the time; in a short time Donelson says, I heard a whistle; as he was acting as second mate I told him to blow two whistles; he blew two whistles. I heard no answer, and in a very short time after that we heard two whistles, and I told Donelson to blow two whistles. I saw a white light from a half point to a point on our port bow, and I had same freight for Ricord's dock, and I says to Donelson, there's a fellow's light on Ricord's dock; and then I don't think it exceeded ten to twenty seconds before the two boats struck; the fog was very dense when the two boats loomed up. I rung to stop and back and the two boats came together.

Q. Where had you been from the time you left Marine City, until the collision, on your boat?

A. On the pilot-house.

Q. State whether you had left that at all, or come down.

A. I never left the pilot-house from the time she was above Sherwood's dock until the collision; never got off when we stopped at a port.

Q. After leaving Marine City, what was your relative speed along up?

A. That I could not say.

Q. Relatively fast or slow?

A. I supposed she was going very slow, for after she went on the bank her headway must have been partly stopped, for she heeled down, and when I stopped the engine she sagged off, and I thought she was going three or four miles an hour.

Q. By land or water?

A. Water.

Q. About what is the current there?

A. I can't say; I suppose from a mile to a mile and a half.

Q. After you rung to go ahead, came near getting aground, about what speed did you make then, when she held down and you ported?

A. That is what I am saying now.

Q. About what speed did you make then?

A. I say I think probably between three and four miles.

Q. Through the water?

A. Yes, sir; I know we had been going very slow. If it had been clear weather we ought to have made Ricord's dock in less than half the time.

Q. You intended to touch at Ricord's dock?

A. Yes, sir; we always slow along at these way points right close to see if we can get anybody out; we may have perishable articles aboard, and if we have to blow a whistle to get people out of bed, or it is
97 likely to rain, or anything of the kind, and we are in a hurry to

go on our trip, we keep the stuff on board until the next day, but if there is a light we go ashore.

Q. Had you anything aboard?

A. Yes, sir; we had some freight aboard.

Q. Now, was your heading changed after you steadied upon your course north-by-east until the collision?

A. I can't say.

Q. I mean until immediately preceding the collision?

A. No, sir.

Q. When the light of the Mayflower was made, state what order was given, if any.

A. None.

Q. What order was given up to the time of the collision?

A. As the two boats loomed up, or at least as the Mayflower, and as I heard some of them saying our boat loomed up to them, we were right together, and I saw that a collision could not be helped in any way; and as the only chance to make a glancing blow of it at all was to put our wheel hard a-port, which I told the man at the wheel to do. After we struck, I asked him if he ported. He said he thought he got it over two or three spokes before she struck.

Q. State how much two or three spokes would effect the headway of the vessel?

A. Very little.

Q. How much would it vary the course?

A. It would not vary her hardly any in that length of time; of course, if you had enough time, put it over three spokes, and the boat would come clear round, but the time was so short it was impossible to swing her round.

Q. State whether you had noticed the land on your port hand side along or not.

A. I hadn't seen the land any from the time we got on to the bank; I could see it at the time we got in close to the bank and touched. I could see the loom of the trees off Ricord's. There is a bunch of trees there; then it shut right down thick again.

Q. At the time of the collision state whether the fog had lit up or continued thick.

A. Just before the collision, a very short time, I think it was as thick if not thicker than any time we had had it that night.

Q. When the vessels came together, how did they strike?

A. Nearly end on—that way.

Q. How far was the Mayflower off when you first saw her light?

A. I can't tell to the distance. I don't think it could have exceeded twenty seconds, if that.

Q. As to the length of your vessel?

A. They must have been very close together, for just as I saw the light, all I had time to say was, "That fellow is lying at Ricord's dock," and the boat loomed right up, and I run the stop and back bell immediately, and they struck.

Q. State whether you saw the shore or not at or about the time of the collision.

A. No, sir.

98 Q. Immediately before or after?

A. I saw the shore after the collision, a very short time after, and I saw Ricord's dock.

Q. About how far were you from Ricord's dock?

A. I should judge probably five or six lengths below the dock.

Q. What effect did the blow have?

A. It slewed us round, and I supposed, taking the collision as near as I could figure it, we struck very near end on, and it slewed as round so that the Mayflower swept past our boat.

Q. State how they came together, and where with reference to Ricord's dock.

A. They came together, as near as I could figure it, right down in here. (Witness illustrating with models.) This boat shoved off there. From the actual measurement of the Dove's stem, it was just eight and a half inches from where she struck to the stem. She had an iron stem on her, and the stroke of the Mayflower's stem was just eight and a half inches on the upper side of the stem.

Q. State how she swung you around.

A. I suppose this vessel coming round, with probably, I should think, from six to ten times the heft of this one—this being a little river boat, the other a grain-loaded vessel, coming down the current, and this boat having a very large wheel—a larger wheel than any boat I have seen here in several years according to her size—and the reversing, I think, must have had her very nearly stopped—this boat having a screw wheel, it would take a considerable distance to stop her if she had a great deal of headway, and she slewed this little boat around at, I suppose, that angle, and slipped by. She rubbed right along by in this way, and I was backing all the time in this way, and drifting down, and the other boat kept backing, and we still kept canting down the river, till we headed about that angle. In the first place, until she headed about here, we kept canting all the time with the wheel hard a-port.

Q. State how she got across the river and struck.

A. This side of her bows was all stove in, and this part here with a bevel to it, and this side was struck off about that angle, so she must have had about five times the leverage there as here, and her rudder was hard a-starboard all the time. At this time, it was perfectly clear, the moon came out bright, so you could see everything; still, the boat canted, so I asked the man at the wheel how it was, and he says its hard a-starboard; says I, jump on it and give it another turn; he jumped on it with both feet. Says he, I know it is hard a-starboard, for the staple is where it belongs; I then ran down to the engine-room, and asked the engineer if the bilge-injection was open; he said no; says I, open it full size; I then went forward and aft, and told the mate to go into the fore-
castle and see if she was making water; he said she was, but not
99 fast; we then slewed right about here, and brought up on the
bank; I don't think she sunk for an hour after we grounded there.

Q. State whether, in your opinion, she was swung round so that her bow was down stream.

A. No sir.

Q. If not, why not?

A. I know she did not swing round, because I could see, just after the collision, the land and everything perfectly plain. When I told the wheelsman to put the wheel a-starboard, she was not heading any more than that angle down the river, and she still kept canting all the while before the Mayflower got on the other side, and I could not understand why she canted until after I saw the leverage that bow had. If she had been heading at that angle she would not have touched that shore. She would have gone down the river, because when I towed her down I had to have a steamboat on this side; we could not steer her; had to have a boat on the lame side to keep her up.

Q. To have a wheel hard a-starboard the effect would be to work her this way?

A. Yes sir.

Q. If she would have minded her helm she would have came around this way?

A. Yes, when so near this shore, if she had swung to the starboard I could have got her under Ricord's dock. But she would not.

Q. Why did you run her to the Canada shore?

A. She would not go to any other.

Q. Suppose you had let her go clear round.

A. She would have sunk in the center of the river; in the condition she was in she kept making right straight for the Canada shore, and when I saw she would bring it, I didn't care which shore she would bring.

Q. From your position, tell us which side of the river did that collision take place.

A. Very near in to Ricord's dock, on the American side.

Q. How far?

A. I should not think the length of the steamer Dove (which is 190 feet) from the bank.

Q. How long after the collision did you see Ricord's dock?

A. Just after the collision, as the Mayflower was backing on this side; as she swung along this side I could see Ricord's dock, and the land on both sides, perfectly plain. The moon came out shining bright—a beautiful moonlight night.

Q. After?

A. Yes, sir.

Q. How was the fog that night, uniform or variable?

A. No, sir; it was variable.

Q. Had it rained any?

A. It rained just after we got over the flats; before we got to Sherwood's we had a squall, and it went to the westward.

Q. About how did she strike the Canada shore?

A. About that angle.

Q. How much of an angle?

A. That I can't say. Taking that for the line-shore there, she struck about that angle, (nearly right angle with the bank, and stern up stream a little.)

Q. Is that right?

A. Yes, sir.

Q. What lights did you carry that night?

A. We carried a white light on the flag-staff, lights up over the pilot-house, green and red lights—green on the starboard side, red on the port, and a white light aft—beside the usual lights down in the hold.

Q. How were they burning that night?

A. Burning well until the concussion of the collision. These two below went out.

Q. What kind of lights were they?

A. I don't know what they call them. I believe they call them French lights. Red ones show plainer at half a mile, they tell me, than at a quarter.

Q. Where did you carry these red lights?

A. Forward of the paddle-boxes.

Q. Anything to obstruct them forward?

A. No, sir.

Q. Did you notice them that night?

A. Yes, sir; before the collision and after.

Q. Your wheelsman; state whether he was a competent, careful wheelsman or not.

A. He is a man I have every confidence in. I have him now.

Q. How long have you had him?

A. Part of 3 years.

Q. Your lookout, what kind of a man is he?

A. A very good man. He was a good man to lookout, and he had very good eyes; was no sailor-man, though, but a good man to tell when he saw a light.

Q. How long has he been with you?

A. I can't say. He was a very attentive man. Probably a month or six weeks.

Q. What opportunity had you to know whether he did in fact keep a good lookout?

A. Every time he made a light he always reported it. He was a very attentive man to his place; never find him away without being sent.

Q. You stand your watch generally?

A. Yes, sir; try to.

Q. Do you know Thos. Dumont?

A. Yes, sir.

Q. Did he go out with you that night?

A. Yes, sir.

Q. State whether you had any conversation with him about taking your position as pilot that night.

A. I asked him to step on the pilot-house and take charge of the decks while I went down in my room and got my rubber coat.

Q. Where was that?

A. Sherwood's.

Q. How far below Marine City?

A. I suppose in the neighborhood of 20 miles.

Q. How long were you gone?

101 A. Just long enough to put my coat on. I didn't have my left arm in going in the door; got upon the pilot-house and buttoned it while up there.

Q. Did you request him to take a spell, saying he was better acquainted with the river than you were?

A. No, sir.

Q. After you returned who gave the orders?

A. I did.

Q. Just before the collision, state whether you heard any hail from the Mayflower.

A. Not until they struck. Then there was no hail. All there was, somebody aboard the boat said it was the Dove.

Q. On the other boat?

A. Yes, sir.

Q. I don't know but it is down in full all the conversation you had with Donelson about the whistles at the time when you first heard the whistle?

A. All the conversation I had with him, he heard one whistle and I told him to blow two, so he blew two. We were keeping that side of the river up to the light at Ricord's dock.

Q. How long had you blown these whistles?

A. Ever since we passed Algonac.

Q. How frequently?

A. Probably every minute, or less.

Q. State whether Donelson said he heard two whistles at that time, or any time before the collision?

A. No, sir; he didn't. The exact words I remember; that he said he heard a fellow blow a whistle.

Q. And that was when you gave the order to answer two?

A. Yes, sir.

Q. What would two indicate?

A. That you were on the port hand side bound up.

Q. And would pass all vessels on your starboard hand?

A. Yes, sir.

Q. If you heard two whistles of a vessel coming down the river what would it indicate?

A. That the vessel was to pass on the other side of the centre of the river. That is what we generally suppose.

Q. That would be on the Canada side coming down?

A. Yes, sir.

Q. That you were passing on the starboard hand?

A. Yes, sir.

Q. What order was given besides "hard apórt" after the lights of the Mayflower were made, if any, before the collision?

A. None, sir.

Q. (With reference to the mistake in the libel.) State whether you ever made any statement that you put your wheel astarboard at the time of the collision?

A. No, sir.

Q. Or had you ever heard of it before?

A. No, sir.

Q. You signed this libel; was it read to you?

A. No, sir.

Q. Was not the substance of it stated to you?

A. Yes; that it was the collision between the Dove and May-
102 flower, and stating a suit was going to be entered, and I signed the note.

Q. State whether there was any order given to starboard?

A. No, sir; none.

Q. State whether or not you passed any tows or rafts that evening up?

A. We passed a raft right close to the lower end of Hirst's Island, where the woods are.

Q. Logs or lumber?

A. I think it was logs.

Q. Was there any fire about it or light?

A. Yes, sir; a very large fire.

Q. How far was that below Marine City?

A. Probably about sixteen miles.

Q. How far is Ricord's dock below Port Huron?

A. I suppose it is in the neighborhood of eighteen miles.

Q. You say you saw Ricard's dock; what part of it did you see, or what did you see on it?

A. The whole dock and the buildings.

Q. About how far were you from it, in your judgment?

A. At the time I saw the dock, I suppose we must have been one-third across the river and considerable below.

Cross-examined by Mr. Russell:

Q. A large portion of the fifteen years' experience which you refer to has been upon the Detroit River between here and Malden?

A. A greater portion of thirteen years.
Q. For how long a time have you run a vessel on the St. Clair River?
A. Every year for fifteen years.
Q. And the same years you run to Malden, did you also run the St. Clair River?
A. Yes, sir.
Q. What vessel?
A. The same boat, the Pearl.
Q. Towing?
A. Yes, sir; I took a tow every Saturday night I could capture one and go to Lake Huron with it.
Q. Violating the hours of the Sabbath?
A. I could not help that; I was sailing for a man by the name of Sheperd, and he didn't keep the day.
Q. Were you a little late that night getting up?
A. Yes, sir.
Q. About how late?
A. I think we were about an hour late.
Q. Were you not hurrying up consequently, in order to make up for lost time?
A. I did as far as the flats.
Q. Were you not behind time when you reached Marine City?
A. Yes, sir.
Q. About how much?
A. I should think probably twenty minutes or half an hour.
Q. Now, did you not proceed in such a manner as to endeavor to make up for that lost time?
A. No, sir, but I gained a great deal in this way, which I can explain, that will save a great deal of questioning; we didn't stop at the
103 flats, at Sherwood's, Fisher's, Forrest, Baubese Point and at Roberts, and sometimes we stop at Cottrell's before arriving at Marine City, and we were behind at most every one of these places.
Q. You say you omitted these places?
A. We generally make these places, but this night it so happened, being late and one thing and another, we hadn't any passengers for these points, and we had not to make any place but Algonac, and our next stop was Marine City.
Q. You saved considerable time, then, before getting to Marine City that way?
A. Yes, sir; we were running slow, for then we were behindhand from twenty to thirty minutes.
Q. Behind at Marine City?
A. Yes, sir.
Q. What was your destination?
A. Port Huron.
Q. Now, I ask you whether, after leaving Marine City, you didn't feel anxious to make up that lost half-hour?
A. Yes, sir, I felt anxious.
Q. Now, I ask you whether that anxiety didn't lead you to proceed at a rapid rate?
A. No, sir.
Q. You made no attempt, then, to make up for lost time?
A. I was the same there as in Detroit; I was anxious here to get to the flats that night, but the minute the fog set in she checked right down and stopped.
Q. Had Donelson ever sailed with you before?

A. Yes, sir.
Q. How long.
A. He was with me part of the year before.
Q. Why was he acting as second mate?
A. The second mate had gone to get married.
Q. You had no second mate, then?
A. No, sir.
Q. Was he shipped as such?
A. No, sir.
Q. Do you consider a second mate a necessary part of the complement of the crew of a vessel?
A. No, sir.
Q. Haven't you always carried one?
A. No, sir; don't carry one now.
Q. Let me understand how it was that you were at Bury's dock on the Canada side?
A. We were not at Bury's dock.
Q. Near it?
A. We were not. We might at one time have been a little nearer to it than the American shore, in steering up along here. We will say here is Marine City, there is the upper end of the town; now suppose we were running right along, here is Ricord's dock, here is where we struck the shore, here is Bury's dock here, and here is the bay in the other shore here; you take that, running a straight line, about here.
Q. Why did you straighten up for the American side?
A. I did not.
Q. What did you do?
104 A. I kept her on her course from Marine City to bring her in below Ricord's dock, exactly where the course would bring her.
Q. When you were opposite Bury's dock how did you attempt to lay your course for Ricord's?
A. I didn't change her course at all until we brought up on the bank—not from Marine City.
Q. Then if you didn't change your course at all how did you fetch up in the marsh?
A. We brought up below Ricord's dock, where the course brought us.
Q. You don't mean to say your proper course would bring you aground?
A. No, sir. Of course you are very well aware you can't keep a vessel on a direct line from where you start to another point; you make it as near as possible. I may steer the same course as another man for the flats, and we may vary a mile apart, but we all reach the flats.
Q. About what is the distance from the point where you suppose you got aground to Ricord's dock?
A. I can't say as to the distance, but we had been under way a very short time before the collision.
Q. You are very familiar with the rivers; sailed it once a week for fifteen years?
A. Yes, sir; during the season of navigation.
Q. You must be able to give us some opinion as to the distance where you hit in Ricord's marsh to Ricord's dock?
A. I should say not over one-eighth of a mile.
Q. What freight had you for Ricord's dock?
A. I don't remember what we had.
Q. Do you remember for whom it was—what owner or consignee?
A. No, sir. We have a rule for the river-boats; the clerk notifies us

where he has passengers and freight for; we don't ask anything about what it is or anything of the kind; and sometimes when the clerk hasn't time he sends up a little memorandum by the steward, saying to stop at such docks.

Q. If I understand you correctly, you put your wheel aport at the marsh?

A. Yes, sir.

Q. How long was it kept aport?

A. Just until she swung off into deep water; a few minutes or moments.

Q. I would like to have you estimate the time you kept your wheel aport at the marsh.

A. I can't tell; it was the time she would swing one point.

Q. A single point?

A. Yes, sir; that is all she swung.

Q. Give some estimate of the time.

A. I would say probably fifteen or twenty seconds; she would turn round in the river in one minute, or it took just sixty seconds from the time the wheel was put over until she would head for the foot of Wayne street.

Q. Your boat was, however, getting further out into the river,
105 getting further away from the channel bank?

A. She either had to do that or stay on the channel bank.

Q. The whole object of the manœuvre was to get out from there towards the center of the river?

A. The bank curves out, and in running along with the river bank we had to hollow out in order to get by the bank, and still be close to it.

Q. That marsh is in here; there is Ricord's dock; you put her in to shore there; supposing that is the marsh, and she comes round here in this way, and here is Ricord's dock, you change your course for shore one point? (illustrating on map.)

A. Yes, sir.

Q. When you grounded could you see the above—or when you came near grounding?

A. Yes, sir; I heard the little frogs chirping, and I could see the rushes and grass.

Q. You could see the shore?

A. Yes, sir.

Q. How long did the shore remain in sight?

A. But a very short time. I could not see the shore quite as well as Donelson could; he said he could see the old logs right in Ricord's dock; I could see the shore, but did not see the logs.

Q. When you saw the white light did you suppose it to be that of a propeller lying at Ricord's dock that you saw, and did you try to avoid a collision?

A. No, sir; the light was bearing fully a point on our port-bow, and there was no need of taking measures to avoid a collision.

Q. You say it is only one-eighth of a mile from where you came near getting aground to Ricord's dock?

A. I think so.

Q. You say further, that after running a short time you made this light, which you supposed to be at the dock?

A. Yes, sir; at the dock.

Q. Did you not put your helm aport to avoid a collision?

A. No, sir; I put my helm aport, or told the wheels-man to put it aport when I saw the collision was about to take place, to make a

glance to ease the blow; did that after we saw it was impossible to avoid the collision.

Q. The whole testimony in the case is the Mayflower was running down on the Canadian side. Supposing the Mayflower was running down on the Canadian side, suppose that she was within a vessel's length of the Canadian side, and you were within 190 feet of Ricord's dock, will you explain—give your theory or explanation of how she would have crossed over from the Canadian side, and got in on your port-side between the shore and your boat; how we got between you and the shore?

A. That I can explain if you tell me how fart he boat swung; of course if we swung down there she would be very near—a very little angle would do it.

Q. I want your opinion as an expert how she got in be-
106 tween you and the shore when you were within your boat's length of the shore.

A. Well, to take it as she is here, bound down for Marine City, heading for Marine City; we will say she is right in here at Ricord's dock, and I am coming in here; you can see very readily how they can come together.

Q. Your theory is she was bound for Marine City; now I ask your opinion how we contrived to get in between you and the American shore when you were your boat's length from the shore?

A. All I can say, if that boat was here on this shore and we on this, we would not have come together. The only opinion I can give you is the boat, instead of coming on the other shore, she came right along here to Ricord's dock.

Q. Now, I ask you again if you supposed the light of the Mayflower was a light lying abreast of Ricord's dock here—I ask you if you didn't put your wheel aport in order to get away from her, to get out towards the centre of the river?

A. I never altered my wheel one particle from the time I left Marine City until she got on the bank, and never after she got off the bank until the boats were coming together.

Q. How long a time was there between your order "hard aport" and "hard astarboard?"

A. Well, I can say the time would be very short, just while the Mayflower was ranging by the Dove, only going 192 feet; that was all the time that elapsed from hard aport to hard astarboard.

FRIDAY MORNING.

Cross-examination resumed by Mr. Russell:

Q. Do you still adhere to that answer, that you never shifted your wheel a particle from the time you left Marine City until you brought up in the marsh?

A. I adhere to that I told the wheelsman to keep her on her course. Of course he must shift his wheel a little to one side or the other in steering. He could not put the wheel amidships and keep it there. But I gave no order to the wheelsman to shift his wheel to port or starboard. A man can't steer a boat and keep her on her course without shifting his wheel.

Q. That varies the matter considerably. Do you mean to say you let the wheelsman steer as he pleases, without orders from you?

A. No, sir; I mean to say, when a man is given a course to steer any given direction, that he keeps the vessel on that course as near as pos-

sible. I don't suppose the man lives who can steer a vessel on a line given on the chart from one point to another.

Q. Did you give the man at the wheel a course to steer by, and what course?

A. Yes, sir; I gave him the course north until we got up to where we came near grounding.

107 Q. Did you not, when you were as close to the American shore as you were that night, steer by the shore?

A. If we can see the shore we don't steer by the compass through the rivers at all; never carry a light in the binnacle without it is foggy weather, and the only object is to steady from one point to another if you can see objects to steady by.

Q. Did you that night steer by the compass?

A. Yes, sir; that is, when it is foggy we steadied by the compass.

Q. If you could see the shore at short intervals, as the testimony is, and you run as near as possible to shore, what necessity was there of employing the compass?

A. We were not running as close as possible to the shore; we were making as near as possible a straight line from Marine City to bring up at Ricord's dock, and in steering that course the way the ground lies, running off a point would naturally bring the boat in a little.

Q. When you came near grounding in Ricord's marsh, did you look at the compass, or give the man at the wheel north by east from the compass?

A. No, sir.

Q. Did you not testify, on your direct examination, that you run north by east from leaving the marsh until the collision?

A. Yes, sir.

Q. How did you arrive at that course?

A. When the vessel came near grounding I stopped her, put the wheel to port, the bank being very bold, until she swung off into deep water; and when she was steadied right up, she was heading north by east, and at that we went ahead.

Q. The question is, how did you know she was heading that way?

A. By the compass.

Q. I just asked you if you looked at the compass when you gave north by east to the wheelsman.

A. You asked me if I told him to steer north by east. I didn't give him the course to steer north by east, but when we steadied off the bank I asked him how she headed; he said north by east, and I looked at the compass and saw she was, and I told him to steady her at that.

Q. Wasn't it an unusual thing for you to look at the compass at that time?

A. No, sir.

Q. Did you not testify you could see the land at that time—the American shore?

A. At the time we got off the bank I did say we could see the rushes, and I could hear the little frogs chirp, and knew we were very near the bank, and at that moment it shut up very thick, thicker than any time we had it that night up to the time of the collision.

Q. And with that knowledge of your nearness to the shore, you took pains to take your course by the compass?

A. Yes, sir.

Q. This is the Dove coming up here; when the vessels came
108 together, didn't the Dove swing round her starboard side down

the river, and didn't the vessels come to a stand in about the position illustrated?

A. No, sir.

Q. The vessels lying nearly alongside, across the river, heading to the Canadian shore, the Dove heading partially down stream?

A. No, sir.

Q. Did you not back toward the American shore, and did you not cry out to the Mayflower to get out of your way, and did you not go forward on the port side of the Mayflower and rake her in that manner, and pass down to where you grounded?

A. I can't answer that yes or no. In the first place, I was backing the engine when the Mayflower passed her.

Q. You were backing, then, when the Mayflower passed on your port side?

A. Yes, sir; the moment the Mayflower cleared our stem I went ahead. The Mayflower, I supposed, was backing; she scraped in on the starboard side, abaft of the paddle-box, and I sings out to Capt. Woodworth to go ahead out of our way. She struck us on the starboard paddle-box.

Q. How long and how far did you back?

A. I probably gave her from two to five turns back, just while the Mayflower was rubbing by our port side.

Q. What distance, in your estimation, did you back?

A. I don't think the distance was any.

Q. After the collision, when the vessels came alongside, heading across and a little down the river, didn't the vessels lie still—stand still, both of them?

A. No, sir.

Q. How did you get astern of the Mayflower after that?

A. In my opinion, if you want my opinion, the heft of the Mayflower, at the rate of speed she was traveling and the light little boat she struck, the Mayflower would carry her away with the backing she was getting, in my opinion, to bring up on the American shore, if she had not been backing strong on the Canada shore, a propeller loaded with grain and backing; I could take my boat and back her in 500 feet, while I don't think you could back a propeller in a quarter of a mile.

Q. Did the propeller sing out to you, You are afire?

A. Yes, sir.

Q. Did you tell the propeller you could not work your engine?

A. No, sir.

Q. Did the propeller offer to give you a line and tow you ashore?

A. No, sir, not that I heard; Capt. Woodworth asked me if I wanted any assistance. I told him no, he had assisted us all I wanted; that is the exact language, if I remember.

Q. How did you lie with reference to the Mayflower, when she sung out to you "You are afire?"

A. Supposing this to be the Mayflower, the Dove heading
109 about this position and the Mayflower that; this is the Dove and this the Mayflower; the clerk's office was on the starboard side, abaft the captain's room. The concussion had thrown the lamp down; then the captain sung out that the boat was on fire.

Q. The point of time was when you were approaching the Mayflower from astern and coming up on her port side; that was the point of time he sung out "You are afire;" when you were approaching the Mayflower on her stern quarter, that was the time.

A. It might be a little sooner than that when he sung out that, and the steward jumped in to throw the lamp out, about that position.

Q. How were the vessels heading at that time when the cry of fire was?

A. I should think just about that position; the Mayflower was heading nearly east, and we were heading about northeast.

Q. What order did you give the engineer immediately after the boats struck?

A. We were backing after the boats struck. After the Mayflower shoved by I ordered him to stop and then go ahead and work her strong.

Q. When you lay aground, could you see the lights of the Mayflower?

A. Yes, sir.

Q. Describe how and where.

A. I think probably half-way from there to Marine City; probably not that distance.

Q. How far by distance should you say?

A. I should say nearly a mile.

Q. Was the fellow whose light you saw lying at Ricord's dock?

A. No, sir; I wish he had been.

Q. Was the fellow whose light you saw the Mayflower?

A. Yes, sir.

Q. Could you see Ricord's dock at the time of the collision?

A. No, sir.

Q. How, then, are you able to testify that at the precise point of the collision you were five or six lengths below Ricord's dock?

A. From where we were at the time we were on the bank, and where I saw the land at the time it cleared up, before it shut down thick.

Q. Your sole ground, then, for the statement of your nearness to Ricord's dock is the fact that you were near the American shore when you came near grounding?

A. No, sir.

Q. What additional fact?

A. The fact is, that just as we got off the ground the weather lit up so I could see the trees back of Ricord's dock (there is a large clump of trees there) perfectly plain; they stand out more prominent than anything else in that part of the river.

Q. You saw these trees when and where?

A. At the time we sheered off the bank, and then it thickened right up.

110 Q. You have no knowledge, then, of your nearness to the shore from the time you left the bank, but supposition?

A. Yes, sir.

Q. What further knowledge?

A. The course by the compass. If I had had no compass in the pilot-house I would have had no knowledge, but having the compass I am just as certain as I am sitting here.

Q. You have no absolute knowledge, then, of your nearness to the American shore after you left the place where you came near grounding, except that which you derive from your compass course, and that compass course is what you rely upon when you swear at the time of the collision you were five or six lengths from Ricord's dock?

A. No, sir.

Q. What was it?

A. I say that the compass course—as to that course I know that we were near the shore. I understood you to ask the question how I knew we were near the American shore; I was steering that course with the

compass. Now the next question I understand is, how did I know or think I was five or six lengths below Ricord's dock. I think I have answered it, but will do it again. At the time we left the bank, when I put the wheel aport and steadied her, I could see the clump of trees at Ricord's; that is why I supposed we were five or six lengths below Ricord's dock.

Q. How far was the point where you fetched up below Ricord's dock?

A. I should think one-eighth of a mile.

Q. How long is that marsh and bay?

A. The marsh and bay from Marine City, in taking circular line or straight across?

Q. Lengthwise of the American shore—this marsh about where you were aground?

A. In here I should think, (one and one-fourth inches on the scale.)

Q. What means have you of judging you grounded as near Ricord's dock as that?

A. By seeing the land from where we grounded, and seeing the trees.

Q. Is that what is called Ricord's Bay, where you state you grounded?

A. No, sir; it is a whole point most below the dock; right in there. I don't know whether the whole of it is called Ricord's Bay.

Q. What do you call this where this little creek comes in?

A. We call it the bay between Ricord's and Bay City.

Q. Will you swear the place where you grounded wasn't one mile below Ricord's dock?

A. Yes, sir.

Q. Describe how the vessels were lying with reference to each other and with reference to the shore when you gave your order hard astarboard?

A. (Illustrating.) About that position—heading just about as I said before, the Mayflower nearly east and the Dove northeast; we might have been northeast by east.

111 Q. You lay with your starboard bow near the front quarter of the Mayflower?

A. Yes, sir.

Q. Was that after or before you halloed to Woodworth to get out of your way?

A. Before.

Q. Describe as shortly as you can the reason which led you, when your boat was within her own length of the American shore, to run three-quarters of a mile for the purpose of stranding her on the Canada shore, being loaded with passengers whose lives were in danger?

A. Just that reason exactly. I have the wheel hard astarboard to get her on the American shore. She had probably 100 tons of freight on her; she had a lot of cattle on her forecastle deck, and I wanted to get her out forward, and tried with the wheel hard astarboard to get her on the American shore, but she kept canting off to the Canada shore all the time, and I could not get her on the American shore possibly; her bows being sprung off she went toward the Canada shore. I told the engineer to work her as strong as he could and get his bilge-injection out. I hadn't any idea of getting to the Canada shore; supposed she would swing round until I saw the leverage on her bows, and in towing her down here I could not steer her at all. I had to put a steamboat on the steer side of her.

Q. I understand you, then, to testify distinctly that when the Dove was within her own length of the American shore at the time of the collision it was impossible for you to strand her upon that shore?

A. Yes, sir; I might have stranded her on that shore, but when she sunk she would go down where the leakage was, and I would lose her whole cargo; and by stranding her forward I might save her. I was perfectly cool; knew what I was doing.

Q. Did you not testify that your vessel would turn completely round in one minute?

A. Yes, sir; not completely round. No, sir; I think you will find by referring to the notes I said by the time you would get her wheel round she would be headed for the foot of Wayne street.

Q. When your boat fetched upon the Canada shore did you know which side of the river you were on?

A. Yes, sir.

Q. Did you formerly own a vessel called the Mohawk—steamboat?

A. I didn't own her; I was interested in the sale of it.

Q. Was she in your possession?

A. I was interested in the sale of it.

Redirect by Mr. Moore:

Q. Where were you when this trial commenced?

A. I can't say.

Q. You were on your boat on Lake St. Clair?

112 A. I can't say. I have been trying to get down here since a week ago Wednesday.

Q. You reached here when?

A. Yesterday morning, I should think about 9 o'clock.

Q. Your boat leaves when again?

A. Her time to leave was this morning at 9 o'clock.

Q. She is going to-day and waiting for you now?

A. Yes, sir.

Q. At the close of your testimony?

A. Yes, sir.

Q. How long was it before you got the Dove off the ground where she grounded?

A. I really forget; I think it was twelve or thirteen days.

Q. Have you any interest in the result of this suit now, captain?

A. No, sir.

Q. Are you a stockholder in this company?

A. No, sir.

Q. Were you last year?

A. Yes, sir.

Q. You have no interest in it now?

A. Not a dollar.

Q. In this suit?

A. No, sir.

Recross-examination by Mr. Russell:

Q. You were a stockholder at the time of the collision?

A. Yes, sir.

Q. When you say you have no interest in the result of this suit, do you have in mind the fact that you were master of the vessel, and are partially liable for all damages resulting from your incompetence or neglect?

A. That I don't know. There has been one case tried on the lake, I believe, but I don't think they held the masters liable; that is my opinion. I have had men sailing for me and had cases tried in court, but I never held any man. If I hired a man, and thought he was capable of sailing my boat, and had anything of this kind happen, I would not hold him.

Q. When you say you have no personal interest in this case, you say so upon the theory that you would not be personally liable to either party for the results of your neglect or carelessness?

A. I suppose if they could prove I was neglectful, had been sitting in my room playing cards, or something of that kind, and a collision took place, they would have a right; but taking while I was up there tending to my business, I think they would not.

Q. Are you not testifying directly to shift a heavy liability off your shoulders?

A. No, sir; there has never been a word said about liability about either party.

Q. Was your boat pretty crank?

A. Yes, sir.

Q. Does she roll like a cask, as Mr. Fletcher, I think it was, said?

113 A. I didn't understand him to say that we have barrels on her, and what I understood him to say was, she rolled like a cask—would roll when we struck.

Q. Was the engine too big for the hull, or what was the matter with her?

A. No; she was trimmed a little too much by the stern.

Q. Was the engine placed in the hull too high up?

A. No, sir.

Q. Have you since taken out her engine?

A. Yes, sir.

Q. Why?

A. To get what I thought was a better one.

Q. Is she cranked as she was before?

A. No, sir; the difference between the two engines now is only $8\frac{1}{2}$ inches.

Q. Does a crank vessel steer as well as one not crank?

A. I think not; it depends greatly on the build. Some vessels you can't steer any way; they are just as stiff as churches.

By Mr. Moore:

Q. How did the Dove steer as to minding her wheel?

A. Well.

Q. You said you had no interest in this suit; has any claim been made against you by the company?

A. No, sir.

Q. Are you on the bond for the bonding of the vessel?

A. That I can't say; I think not.

Q. There was a cross libel filed; you are not on that?

A. I think not; I am pretty sure I am not.

Q. When you answered you were not responsible, you spoke with reference to your own knowledge of your legal liability?

A. Yes, sir; and knowing the men I had sailed for, I took that into mind.

THOS. DUMONT sworn for the Dove.

Examined by Mr. Newberry:

Q. Where is your residence?

A. Marine City.

Q. Your age?

A. Thirty-four years.

Q. What is your occupation?

A. Sailing.

Q. How many years have you sailed?
A. About sixteen.
Q. On what waters?
A. Lake Huron, Lake Michigan, Lake Superior, Lake Erie.
Q. And the rivers?
A. Yes, sir.
Q. Were you on the Dove the trip up in which she had the collision with the Mayflower?
A. I was on her as far as Marine City.
Q. In what capacity, passenger or seaman?
A. Passenger.
Q. Did you hold pilot papers then?
A. I did, sir.

Q. A witness swears as follows: Capt. Sloan requested him (that
114 is, Dumont) to act as pilot, and stated that he (Dumont) was a little better acquainted with the channel than he (Sloan) was.

(Objected to.)

Q. State whether you went on the pilot-house of the Dove, and under what circumstances you went, and where.
A. I was on the pilot-house with Captain Sloan. He asked me to come up with him. It was a very dark, foggy night, and we were above the flats, and he says, "Dumont, it is very thick and nasty, and," says he, "I would like to have a little of your assistance," so I helped him look out from that. He never asked me to take charge of the boat, or anything of the kind—merely asked me to help him look out.
Q. Whereabouts in the river was that; below the southeast reach?
A. About a mile above the flats. I should judge a mile and a half.
Q. Along the breast of Hurst's Island?
A. Just below the island.
Q. Do you remember his going after his rubber overcoat?
A. Yes, sir; I do.
Q. What did he say to you, if anything?
A. Says he, "Look out for a minute; I am not very well, and may get very wet, and I want to go and get my overcoat."
Q. How long was he gone?
A. Not over a quarter of a minute. It was not over seven or eight paces from my room.
Q. Whether it was raining or not?
A. It was raining very hard; I got a very severe wetting, I know.
Q. When Captain Sloan asked you on the pilot-house, did he tell you that he considered you a little better acquainted with the channel than he (Captain Sloan) was?
A. No, sir.
Q. Anything to that effect?
A. No, sir; he merely asked me to help him look out—to stay on deck until he got up by the island.
Q. I will ask you whether, in your judgment, you are any better acquainted with the channel than Capt. Sloan is.
A. No, sir; I would rather trust him with a boat than myself in a dark night there.
Q. Whether it is anything unusual for a master of a steamer, under such circumstances, to ask another pilot who happens to be aboard to come up on the pilot-house and help him?
A. No, sir; it is a common occurrence among sailor-men. I have done it, and seen other men do it.
Q. Isn't it exercising more caution to do it than not?

A. Yes, sir.
Q. Are you acquainted or not with the channel in the St. Clair River?
A. I am.
Q. Know where Hockin's or Bowen's dock is, above Ricord's?
A. I am not acquainted with the people. I know where the docks are.

115 Q. In coming down the river what is the usual course of steamers after passing Hockin's and Bowen's dock—what course do they take after passing on down the river; which shore do they hug or keep in to; what is the ordinary course of navigation of steam-vessels coming down the river, after passing Bowen's or Hockin's dock, as far as you know?

(Objected to. Question withdrawn.)

Cross-examination by Mr. Russell:

Q. In whose employment are you now?
A. Capt. Morgan and Mr. Gordon's.
Q. Who owns this vessel?
A. Mr. Morgan and Gordon own it.
Q. Are you in the employment of any person belonging to the corporation that sues here?
A. No, sir; I am not.
Q. How was the weather when you got to Marine City that night?
A. It was a little thick at the time we got there.
Q. What time was it?
A. I didn't notice, but it was somewheres in the neighborhood of nine or ten o'clock.
Q. About what length of time were you on the pilot-house?
A. How many hours?
Q. Yes, or minutes.
A. I was there, I should judge, about 3 hours—2½ to 3.
Q. Did you give orders?
A. I might once or twice; might have spoken once or twice while Capt. Sloan went for his coat. I don't remember, but I might.
Q. Did you at any other time when he was absent?
A. I would speak to Capt. Sloan occasionally if I thought she was nearer the starboard-hand bank or the port-hand bank, and say she was nearer the one or the other, and would give the orders to the wheelsman; or I might have spoke to the wheelsman when Sloan left the deck. I am not certain.
Q. Nearest what bank did you keep?
A. We kept along both banks at different times; it was owing to the land; sometimes American side and sometimes the Canada side.
Q. Did you meet any vessels coming down before you left the boat?
A. No, sir.
Q. None whatever?
A. Not that I seen.
Q. Did you give the wheelsman orders except during the time while Sloan was absent? You were there about three hours, and you say Sloan was absent a quarter of a minute.
A. Not over that, I don't think.
Q. Didn't you give orders to the wheelsman except during that quarter of a minute?
A. I might have spoken to him.
Q. Didn't you? That is the point.
A. I don't remember. I might have spoken to him while he was gone.

I won't say I didn't, for I might, as it is very necessary for a man to speak. I might have spoken, and not thought of it.

116 Q. While the captain was there?

A. No, sir; if I had anything to say I spoke to Captain Sloan. I spoke to him several times.

Redirect:

Q. Captain, did you see the Dove—the break in her bows after the collision?

A. I did.

Q. After she was got up?

A. Yes, sir; before she was got up.

Q. While she lay with her nose on the bank?

A. Yes, sir.

Q. Will you tell us in your best judgment, from the looks of that break, at what angle these boats come together? Place them as you thought they must have been when they came together.

A. (Witness places the models.) This is the Mayflower; the break come in near the tow-post; the stern was turned right off in this shape, I think, as near as I could judge, from the boat's bows; a little aft of the stem, probably three feet or two feet, went right into the tow-post; and this broke right 'round here.

Q. About how many points of the compass should you judge there were between the courses of these two boats when they came together, judging from the break?

A. That would be about a point and a half, I should think; a point to a point and a half.

Re-cross-examination by Mr. Russell:

Q. A point to a point and a half—the Dove was coming up within 190 feet of the shore—within her length of the shore; now, you say you think their courses were nearly a point and a half off each other.

A. I should judge so by the break of the Dove's bows; I didn't have anything else to judge by. I was there a couple of days; I was 'round there, but not working there.

Q. Suppose the vessels were in that position, is that the proper relative position of the boats?

A. Not hardly as much as that. (Witness places the models.)

Q. Now, I ask you if these are not in the same relative positions? (Placing the boats a little different.)

A. Not hardly; it was nearly a straight line from the break of the stem aft of the stem; there was some iron 'round about here, and she went in right aft of the iron.

Q. And you say, now, there is only one point and a half between their courses?

A. I should not think there was much more than that, if it was that; I should judge about that.

117 Capt. Jos. Nicholson sworn for the Dove.

Examined by Mr. Newberry:

Q. Where do you reside?

A. In this city.

Q. What is your occupation now?

A. I am marine-inspector for Detroit Fire and Marine Insurance Company.

Q. What has been your occupation a prior year to that?

A. Sailing.
Q. How many years have you been sailing?
A. Over twenty.
Q. How many years master?
A. Twelve or fourteen.
Q. On the lakes all the time?
A. Yes, sir.
Q. What class of vessels?
A. Some of the largest and best class of vessels.
Q. Steamboats?
A. Yes, sir.
Q. How many years as first officer or second?
A. I was two years a second officer and a part of three as first officer.
Q. As marine-inspector, what are your duties now?
A. I look after the wrecks of the company, vessels which may be disabled or wrecked that the company have a risk on, to take care of their interest.
Q. Did you see the Dove after her injury, lying on the shore above Marine City?
A. I had charge of the expedition that raised her.
Q. Did you examine the break?
A. I did.
Q. Will you describe? If that helps you, use that, (handing witness a shingle.) Describe that break, the wound—the position and nature of it.
A. This is the position in which I found her; laying on the bank, heading nearly up the river, partly on the bank, with the bow in that shape, twisted off, broke in. I think the blow was—— (supposing this pencil-mark to be the continuation;) this represents the shape of the Dove's bow when she was raised at the main deck—you can't show any other place—it represents the main deck, that flat surface; this is the sides—but they ain't deep enough, of course; the vessel is 189 feet deep—but this is the deck, however; this was twisted 'round in that shape—the bow was twisted 'round it that shape—at an angle so that part of the bow was smashed in about ten feet back; the break came half way across the deck; the break in the deck and the planks back were doubled in there, and the starboard-bow was torn off; the cut was down to the keel, (the up and down part,) as far down as it could go.
Q. A boat wounded in that position, and as she was, if possible, which end of her should be run on the bank?
A. The bow end, of course, where the wound was given.
Q. Will you state, from your examination of that break, at what angle that break represented the boats to have come together in your judgment?
118 A. Very nearly end on, I should judge, from the nature of the break; that is the conclusion I came to at the time from the nature of the break and the shape of the plank.
Q. Suppose the Mayflower had struck the bow in that position, (at nearly a right angle,) what would have been the result on that bow?
A. It might have twisted the bow a little, but would not have made the hole in the port bow, the stem being in the same position, and the hole in the port side would have been probably different.
Q. Would not she probably have taken the bow right off?
A. Yes, sir; in cutting it round it was so smashed that I deliberated to cut it off some time with a saw and build across.
Q. Were you on her when brought down here after she was raised?

A. I was.

Q. How did you manage to keep her straight in the river coming down; what did you have to do?

A. By putting the Eighth Ohio on the starboard side—pulling her by that side.

Q. With the Dove going ahead by her own engine, with her bow in that position, her wheel hard astarboard, what course would she probably take; which way would her bow swing?

A. Turn you round as if the wheel was hard aport and nothing wrong with the bow.

Q. Could the helm of the Dove, put hard astarboard, possibly swing her bow to port while her bow was in that position?

A. I don't think it could; it didn't do it after we got her off.

Q. How was the Dove's engine worked, as to speed, coming down?

A. About as slow as we could; very slowly.

Q. And how was the Ohio's engine worked?

A. As strong as she could work.

Cross-examination by Mr. Russell:

Q. Did you have a risk on the part of the Dove?

A. Our company?

Q. Yes.

A. Yes, sir.

Q. Your company had?

A. Yes, sir.

Q. Did you pay it?

A. I believe so; that is outside my jurisdiction.

Q. You don't know?

A. Nothing but what I have heard; as far as our liability went I have nothing to do with.

Q. You can't say, then?

A. I have heard it has been paid.

Q. When did you first see the hole in the Dove?

A. I think the day after the collision, or next day, went up with a steam-pump, supposing the vessel hadn't sunk below the main deck, but found when we got there she had, and had to come back and get divers and other steam-pumps.

119 Q. Considering that mark (mark on the table) the Canadian shore, state at what angle she lay on the Canadian shore—was a mark made by her as she ran ashore, judging from the position in which you found the vessel?

A. When I found her she was lying in about that, imagining that chalk-line to be the bank, lying in about that position, I think, nearly up stream.

Q. Nearly up stream?

A. Yes, sir; with the bow on the bank lying along the bank, and a little abaft the wheel, from here out, here in the channel, sunk down in the water.

Q. Did you see any mark made by her as she run ashore, in the bank?

A. I did.

Q. Describe how the mark in the bank was?

A. They evidently run ashore, I should think, by the mark in the clay, she run ashore heading a little down stream, from right across the river a little below a right angle, then her stern swung round against the bank, (heading a little down, if any.)

Q. Did she not run into the heavy clay in such a way as to spring her keel when her stern swung round?

A. I can't tell, the water was very clear, and we could see where she had struck the bank.

Q. Then her starboard quarter swung round against the bank?

A. Yes, sir; the current would swing her round.

Q. Now, I ask you whether the keel under the bow didn't run hard into the clay and leave a mark, so that the bending of the stem as you have represented it in your shingle model was caused by the running into the hard clay, and the swinging round of the stern, whether that was not what bent the stem?

A. That is something the shape of the Dove's bows, on stem; she was on the clay to there; the keel wasn't bent out any below that; it was from here up it was bent.

Q. How many feet?

A. I should think, my recollection is, five feet the stem was bent back.

Q. What I ask you is, was the keel bent at all?

A. Not but a little; the keel don't come only to here; her bow differs from that by being cut off rounding, when you get to the keel proper.

Q. Wasn't her keel bent?

A. The keel was stove from the garboard streak about four inches forward, the streak plank immediately adjoining, running from about fifteen or twenty feet to nothing; the keel was started very little.

Q. What, in your opinion, bent the keel; running into the clay, or the collision?

A. I can't tell you.

Q. Have you any opinion on the subject?

A. No; she didn't go into the clay very hard, enough to dig the clay upon this part of the stem; up to here was piled with clay and mud (so the diver said) about two feet high on the lee side.

Q. Describe the longitude and latitude of that hole; or before
120 we get to that, was there a heavy ground there?

A. Yes, sir; quite a strong ground.

Q. Could she lie with her nose aground unless she was pretty well aground, run pretty hard on; would she stick on that ground unless she was run pretty hard on?

A. Yes, sir; the current bears on the bank some at that particular place.

Q. Now, describe the bigness of the hole if you please; the point I want to get at is, how much would it let the water in and how fast?

A. The size of the hole when I found it would let the water in very rapidly, but she had a water-tight bulk-head across.

Q. How many feet was the hole?

A. Six feet, I think, if I remember right; the port side started out from the bulk-head so you could run your hand through; that was probably what kept her from sinking at once; the bulk-head was all that kept the vessel from sinking immediately.

Q. That was the theory you had; how long and how wide was the actual break in the side of the vessel?

A. From the point where it broke nearest the stem, back to where the planks were broken, we used a twelve-foot board to reach across the hole, that would cross and lap on each side, putting the plank up above water, fore and aft.

Q. The hole was nearly 12 feet long?

A. No; from here to there, I think the hole proper would be about 8 feet long.

Q. And about how wide, extending in towards the center of the boat?

A. Smashed the deck along to midships.

Q. Do you mean 8 feet horizontally?

A. Eight feet fore and aft.

Q. How big a hole was it, measuring vertically?

A. In the aft part of the vessel back here, probably eight or nine feet; I don't know how deep she is, but down to the keel.

Q. The hole was all of eight feet, fore and aft, up and down, and extended down into midships?

A. Yes, sir; the concussion started the deck all up, of course.

Question by Mr. Moore:

Q. How far into deck, toward the center amidships, was this hole?

A. It smashed the deck in nearly all forward here; you could stand up in it on the starboard side; it was broke in one-half to two-thirds of the way across the bow toward the starboard side.

Mr. Russell.—Q. Is that shingle on a scale with reference to the size of the boat?

A. No, sir.

Q. Is that shingle as sharp as the Dove is?

A. I don't hardly think it is.

Q. There is no scale?

No, sir; I whittled it out walking down street this morning.

121 Q. Giving some general idea, but the mark you made there in pencil and the point which you whittled there don't have the proper relation to the rest of the shingle that the actual hole had to the size of the vessel?

A. No, sir; I had no idea of making it to a scale; that was simply to give an idea of the shape I found the vessel in.

Q. Did you form any opinion as to the angle at which the vessels collided?

A. I did.

Q. Let us have it.

A. I think very near end on; I formed that simply by the appearance of the break.

Q. Suppose they had met nearly at right angles, what difference would there have been in the break?

A. The end' of the plank on the port bow were turned in and aft, some of them; if they had met at right angles they would not have been turned aft, they might have been turned in, and the scraping on the iron stem commenced very near forward.

Q. The first reason is, because the plank were turned somewhat aft?

A. In and aft, the ends of the plank and the stem was rubbed from forward to where the hole was; whatever rubbed it, rubbed for some distance, the stem or whatever part collided; I imagine it was the stem cut in and went in that shape, I should judge.

By Mr. Moore:

Q. And it scraped the iron on the left-hand side, the port-hand side?

A. Yes, sir; the stem was iron, back some distance; that is the theory I had at the time.

Q. With that hole which you saw in her there, the Dove being her own length from the American shore, in your opinion could or could not she have backed on that shore?

A. They could back her against it, not onto it.

Q. I suppose she would back against it if she backed onto it?

A. No, sir; I believe the Dove was drawing a great deal more water aft than forward, and therefore could not back her on as hard as he could run her on, and the wound being on the other end you would get the good end on the bank and let the bad end sink.

Q. Give us your opinion, whether the Dove, with that hole in her, within her own length of the American shore, could not have been run on the American shore stem on, no matter how she was heading, or heading northeast.

A. She could not have run stem on the American shore unless the river was wide enough to let her turn round and come back on it again; to keep going round that way, if the river was wide enough to let her come round, and keep backing in that way, irrespective of the effect of the rudder, she might.

122 Q. You swear, when the Dove was within her own length of the American shore, here and heading so, (northeast,) three or four points off the shore, in the first place you say she could not have backed on that shore?

A. Could have backed against it.

Q. Could not onto it?

A. I think not.

Q. But could have backed against it?

A. Yes, sir; that is what I say.

Q. And you say then, further, that there was no nautical manœuvre of any kind by which she could have been got on the shore stem on?

A. I don't know of any, unless she could have kept going on in that shape turning round and coming back this way, the position she was in when she came off.

Q. How many miles in that direction would she have had to have gone to get round here?

A. I can't tell you, nor no one else.

Q. A consideroble number of miles?

A. No, sir; turn round very rapidly.

Q. How many hundred feet or thousand feet would it have been for her to go to reach the American shore?

A. Long enough to make a circle round.

Q. I want your opinion as to the number of hundred or thousand feet, take that vessel with that hole in her, under those circumstances, to have turned round and got back?

A. I could give no idea of how many feet it would take. It is one of those things you can imagine, but not very well describe; I can't, at least.

Q. Suppose the river 4,000 feet wide, was there room enough in the 4,000 feet?

A. The river is not 4,000 feet wide there.

Q. I say suppose it to be; the river has been testified to here as three-quarters of a mile.

A. I think she would not turn round in that distance; but you can't tell what you can do until you have done it.

Q. I want to know what is possible and good seamanship. Now I ask you if you had been master of a vessel and lying within her own length of the American shore, whether you would not have made an attempt to reach the American shore?

A. I can't tell you what I would have done. I think I should have got her head on the bank the shortest possible way. If the American shore would present the shortest road, I would take it; and if the Cana-

dian, I would take that. I would try to get the boat's head on; that would be good seamanship, good judgment. A vessel sinking with her bows knocked off, it would be poor seamanship to try to get her stern on the bank and let her bow go down under any circumstances, or on any shore. Those things look widely different to me sitting
123 here to what they would there; and what I may say would be good seamanship might do a great injustice to them.

Q. Now I ask you, suppose you were running a vessel five lengths of your vessel below Ricord's dock on the Canada shore, one length of your vessel from the American shore, and you collided with another vessel, when you were heading northeast, whether good seamanship would not require that you should run your vessel on the American shore?

A. I don't think I would do anything only what in my judgment was the best. A man must take that in all at a glance. He hasn't time to walk round and see what is best; must think in a second. Good judgment would compel me to get on the shore the best way I could.

Q. Which shore does present the best way when within five lengths of Ricord's dock, and one length of the American shore? I want you to answer me that question: lying within five lengths of Ricord's dock, and one length from the American shore, which shore should you seek to strand your vessel on under those circumstances?

A. I should seek the nearest shore, if you leave out this particular case.

Q. I am putting this supposition: A vessel lying within five lengths of Ricord's dock and one length from the American shore. Now, under these circumstances, which shore would be nearest?

A. Within one length of one shore and half a mile from the other?

Q. Yes, knowing the nature of the river.

A. I know one length of a boat 190 feet long is less than half a mile.

Q. Then good seamanship, does it not follow, would require that you should seek to strand your vessel on the American shore?

(Objected to.)

Court.—Ask him with reference to a vessel in this condition.

Q. Now I ask you whether with that hole you have described in the Dove, and the Dove within one length of the American shore and five of her lengths below Ricord's dock, whether good seamanship didn't require that the master of the vessel should strand his vessel loaded with passengers and freight upon the nearest, which was the American shore, the Dove heading northeast?

A. Northeast would be about three points, I should think, across the river. It would be good seamanship and good judgment to get on the nearest land; but in this instance I don't see any way how he could get her on that shore.

Q. Do you testify it was impossible to get her on the American shore?

124 A. I testify, from the condition in which I found the boat, lying in the position she was described to have been in by the witnesses, that that is my opinion. Whether she was in that condition or not, I don't know.

Q. I want you to testify from your own eyesight when you examined the vessel.

A. Yes, sir; I had ten or eleven good tedious days at her. I understand how she was:

Q. Can't you handle a vessel nearly as well going backward as forward?

A. No, sir. That is, with some vessels you can back and partly steer, with no wind or current. The current acts about the same as the wind.

Q. What difficulty was there in backing that vessel toward the shore down stream so as to get her on the shore?

A. I don't understand how you could back her to shore down stream. They could have backed her as long as they had a mind to. I presume there was nothing to prevent them.

Counsel for the Dove offers shingle marked "Schedule A," representation of the Dove's bow, referred to in Captain Nicholson's testimony.

The ownership of the Dove is admitted, and Mr. Russell states that he will not object to any of the formalities.

Plaintiffs rest.

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126 TESTIMONY FOR STRONG.

HENRY DONALDSON.—I have been a sailor from three to four seasons, off and on. Was on the steamer Dove at the time of her collision with the propeller Mayflower. I had been on the Dove since the first trip she made this season. Had been on her pretty near two months. I shipped on the Dove as wheelsman when I shipped. Walter Rose was hor 2d mate. He was not on the Dove on the trip on which collision occurred; believed*d* he stoppe off to get married; so he told me. I was performing his duties while he was gone, on this trip; when the Dove left Marine City I was on the main deck fixing freight, and we

127 had run about ten minutes before I got up to where the captain was; the captain was on the pilot-house, and I stood by the pilot-house, holding the whistle-rope.

Question. Will you now state, in narrative form, the course of events from that time until the collision took place?

Answer. I was aside the pilot-house with the captain, and we got along up the river as far as Barry's dock. The captain spoke and said, whereabouts are we, do you think? I said I thought we were near Barry's dock. I saw two trees right by the dock; he straightened her across the river from there for Record's dock, or as near as we thought we could fetch it. Instead of fetching Record's dock we fetched below it. There is a low, marshy place there where we fetched up. The captain stopped and backed her; he put his wheel aport, ran out a little way into the river, then put his wheel astarboard, and ran up the river again. As we got her straightened up the river, about that time we heard two whistles; the captain told me to answer them, and I answered them. We heard two more whistles, and before this I saw a bright light on the propeller, about the second time I whistled. The captain spoke to me, and said he thought that was a propeller lying at Mr. Record's dock, and I answered the two whistles last above spoken of; and at that time I heard somebody hollering; they wanted to know what the hell we was doing there. The captain of our vessel (I mean Capt. Sloan) told the wheelsman to put his wheel hard aport. I should not think it was over a minute before the Mayflower came into us, and struck us on our stem. The captain (Sloan) told me to go for her boats. After

128 I went for the boats the propeller Mayflower came along and scraped on our steamboat's side. I cannot say whether she was backing or going ahead. We fetched up on the Canada shore. Our cap-

tain rung the bells to go ahead on her, and we fetched up on that shore right below Clay Creek. I heard some one from the Mayflower call out that the Dove was afire, and to get ashore as quick as we could; and also said something about giving him a line and they'd tow her ashore, and our captain answered no. The Dove received the blow on the port bow. When we came to the marshy ground I have mentioned, I cannot say whether we touched ground or not; we were very near it. Immediately after the collision I did not hear any conversation between Capt. Sloan and Allen Robinson, the wheelsman.

Question. Did you, at any time after the collision, hear conversation between Captain Sloan and Allen Robinson, the wheelsman?

(Taken subject to libellants' proctors' objection as leading and incompetent.)

Answer. No, sir, I did not. Allen Robinson and I had a conversation; that was all the conversation. I know Capt. Solomon Gardner; I have had a conversation with him in regard to giving evidence in this cause; it occurred at Marine City when the Dove was laying there, sunken.

Question. State what passed between you.

(Taken subject to libellants' proctors' objection as incompetent and immaterial, Gardner not being a party to record.)

Answer. It was about the collision. I don't know, word for word, what was said, but I told him the way it was, as near as I could then, and he told me that I didn't know nothing at all about it. He
129 said that the Dove had seen the land and docks. I told him that I hadn't seen them. He said he didn't want nothing to do with my evidence. I told him I was d——d glad of it. That's all I know about it. I left the Dove after we had got her up and got her down to Detroit. I worked on the Dove eight or ten days after the collision. I was paid off. I quit on my own hook. I was not discharged. I left her on account of the wages. They promised me a dollar a day—that is, the mate told me he supposed I was to get that sum, and they settled with me for $25 a month, and I left for better wages. I am now employed on the propeller Mayflower. I shipped on her at Marine City.

Cross-examined:

I live at Marine City. Am now wheelsman of the Mayflower. Am shipped for a month at $1 per day. I left Marine City on June 17th, I think. It was early in the morning when I left on the Mayflower. On the night of the collision we left Marine City at about half past 10 p. m. I had no watch to see. When we left the dock I was on the main-deck. We edged up the planks, got up the gangway, and got lines ready for next dock. I then went up on hurricane-deck, alongside pilot-house, about amidships of the house, a little on the starboard side of amidships; can't say how much to one side; I stood on the hurricane-deck; the pilot-house sits on the promenade-deck; can't tell how much there is of the hurricane-deck where I stood; no one else was there except Capt. Sloan, who was on pilot-house; I was alone on the hurricane-deck; the watchman was down on the promenade-deck, right by the bell; I saw no one else about there; if there had been a man on the port side of the pilot-house I would not have seen him from where I stood; when
130 I first came on deck I couldn't see anything on either side; the first thing I saw was Blood's dock; then saw the top of two trees right by Bury's dock; this couldn't have been over five minutes after I came on deck; I saw, when we ran into the low marsh place, as above spoken of, some logs; told the captain what I thought I saw; didn't

tell Capt. Sloan I thought I saw Capt. Woodworth's house; might have told him so, but don't think I did; couldn't see better on account of the fog, which was very thick; the first whistle I heard was two blasts; I answered with two blasts; might have spoken to the captain that there were two whistles blown; I think I did, and he told me to answer them; I didn't say to him at that time that there was one whistle blown; he told me to blow two whistles; should judge the collision took place ten or fifteen minutes, or may be more, after I had blown these two whistles; shouldn't think it was over a minute and a half, or two minutes, from hearing the two whistles of the propeller before we answered from the Dove; the blasts of the Dove's whistles were not two seconds apart; I blowed them very distinct; we had blowed two whistles on the Canada side (cannot say how many blasts) and one when on the American side, after leaving Marine City, and before collision; I was not on deck before reaching Marine City; after hearing the propeller's whistle, there was six or seven whistles blown before the collision; after leaving Marine City, two whistles were sounded by the Dove; I mean two blasts of the whistle; I cannot tell you how many blasts we blowed on the Canadian side; I was standing at the pilot-house with the signal-rope in my hand; we had blown a good many
131 whistles before I heard any whistles from the Mayflower; conversation with Gardner was in front of Drummond's tin-shop, at Marine City; had but one conversation after collision; Mr. Gallagher stood out in the road, and Mr. Parker on the sidewalk, about 25 feet from us; had no conversation with Gardner in any other place; did not have a conversation with him the same evening in Mr. Parker's house; I suppose it was Allen Robinson had the conversation, as Capt. Sloan came after him and took him that way; at this conversation, Gardner asked me how the collision occurred; I told him what occupation I held; how I occupied Ross' place; that my name was not on the books in the office; Gardner said he didn't carry a 2d mate, and wouldn't have a 2d mate on any of his boats; that he wouldn't have Walter Ross any way; wouldn't let him sail a hog-trough; I said Capt. Sloan told Walter Ross to have me go in his place; I said it was not my fault I was there; that they had put me there to see to the men; he asked me if I'd seen the docks and such things, and I told him I had not; he said Mr. Dana had seen the docks; I told him I had not seen them at all, it was so thick and foggy I couldn't see them; I told him about the whistles, that we heard the Mayflower's two whistles and we answered them; I had previously told him about running into the shore, and how the captain backed out, put his wheel aport, then straightened out, put his wheel astarboard, and ran up the river, and that after a little while we heard two whistles, and answered them, then heard two more, and the captain told me to answer them, and we heard the propellor blow two more whistles, and the captain turned to me and told me to blow them short; that we blowed two more short, and I don't know how far
132 we run before we heard some one holler, and the propeller came into us; then I told him about the fog, and how I could see nothing on shore, and then Gardner put his memorandum-book back into his side-pocket, and said he didn't want to have anything to do with me.

Question. Did you say to him in that conversation that the first whistle you had from the Mayflower was one whistle?

Answer. No, sir, I did not.

Question. Did you not say that you told Capt. Sloan that you heard one whistle, and he told you to answer with two?

Answer. No, sir; I did not, at that time.

Question. Did you not say, also, that after you sounded the two whistles, Capt. Sloan told you that you heard two other whistles, and immediately after the collision occurred?

Answer. No, sir.

Question. Did you not also say to Captain Gardner at that time that in answer to the two whistles which Capt. Sloan told you to give, you received in answer two whistles, and that the collision occurred right off?

Answer. No, sir; I did not, because we had more whistles than that, more whistles than the two blasts.

Question. Didn't you say there that you only heard from the Mayflower two signals, one of one blast and one of two before the collision?

Answer. No, sir; I did not.

Question. Did you say anything in that conversation to Capt. Gardner, that you heard any hail from the Mayflower before the collision?

133 Answer. I could not say whether I did or not; can't say whether I told Gardner or not that I heard some one say from the Mayflower, "what the hell are you doing there?"

Question. Have you ever stated to Gardner, Sloan, or any other of the officers or owners, that you heard any hail from the propeller prior to the collision?

(Question objected to by claimant's proctor, because time, place, and names of the other persons besides Gardner are not given.)

Answer. I might have stated to Sloan or Broadbridge that I heard some one say from the propeller, "What the hell are you doing there?" or "where the hell are you going to?"

Question. When did you first state that you heard any such hail, and to whom?

Answer. I don't know whether I first stated to Capt. Sloan about it or not, or to Mr. Broadbridge; I told Broadbridge about their hollering the next morning; I might have told Capt. Sloan about it, but don't remember. I have stated to the folks around Marine City about what we heard; I also told Captain Woodworth and his mates about what we heard; stated it to Woodworth's mates when the Mayflower lay at Marine City docks, cannot say when; Captain Woodworth didn't tell me that he hailed me.

Silas Woodworth, 1st mate, shipped me on the Mayflower; I went to her 2d mate first; he told the 1st mate he shipped me; I had known him two years, and we are always together when at home; he spoke to his uncle; am not frequently at Woodworth's house; have been there twice in my life; I live half a mile distant from him; have lived there altogether about 20 years; was born and raised there.

134 Question. Did you not tell Mr. Gallagher, on the same day that you had this conversation with Mr. Gardner at Marine City, that you first heard one whistle from the Mayflower, and then two, and that then you struck right away?

Answer. No, sir, I did not.

Question. Did you not, on that same day or occasion, say to Mr. Gallagher that as you passed up you saw Blood's dock and Gallagher's place?

Answer. No, sir; I might have told him that I saw Blood's dock, and didn't see it plain.

Question. How is the shore about where you came near to the shore, below Record's dock?

Answer. There is a reef runs out there; can't say how far; a shoal place; should think that was what we run close to; and the captain

spoke and said we must be near Record's dock. When we came close to the shore we backed out, and the captain put his wheel aport, I can't say how far, and when we got out he put his wheel astarboard. I couldn't see the compass or any ranges. I know we were on the American side when we ran in; cannot swear we were, but should think we were. I got down on the port-hand side and looked and thought I saw some logs; can't tell how far off these logs were; they were right close to the beach, the logs that I thought I saw; I saw no compass; Captain Sloan swore he eased off shore, backed up a ways and told the wheelsman to put his wheel aport; he rang two bells to back; when we had backed far enough, as he thought, he put his wheel aport, and he rang the bell to go ahead; can't tell how far this was below Record's dock, nor about how far; the time I saw the Mayflower's lights it bore about a point, I think, on our port bow; I was standing then on our starboard side; can't say how far I was from the stern of the Dove; can't give an esti-
135 mate; could tell if I paced it off. After that time up to the collision I could see nothing on the land on either side. After the collision the Dove swung around down the river, heading across the river. The Mayflower stopped there a little while; she swung around and raked us along our starboard side, cannot say how long she laid there, and then went along down to Marine City. I went to the port quarter where the boat hung, and helped lower the boat and sculled her around to the bow of the boat to see how much damage was done. Then came to the gangway and got the ladies in the boat and took them ashore. The Dove at this time had fetched up and was laying opposite Clay Creek. The Dove wasn't running when I went up to her bow. This was twenty-five or thirty minutes after the collision, may be more; she fetched up not longer than ten or fifteen minutes after the collision. When I first saw the Mayflower, all I could see was just her stem; she must have been a hundred feet off, might be more, may be not so much. The hail I heard was just as I saw the bow of the boat. The last order that was given on the boat prior to the collision was to tell the wheelsman to put his wheel aport; this was just after we blowed our two last whistles; cannot say whether it was before or after I saw the Mayflower's bow. The collision occurred a minute or a minute and a half after this. I heard no answer given to the Mayflower's hail; the hail was just as the boat struck us; just as the boat struck us they hollered.

Question. Was not this order to port given just about the time you heard the hail?

Answer. I think it was given before I heard the hail.

Question. How long before?

136 Answer. It might have been a minute and might have been over a minute; I'd say a minute as near as I can judge; before the collision, I think I heard nothing given by Sloan after the order to port until the collision; he rung bells to back her, after this order to port; rung two bells to back her right off after the order to port, and then rang to back her strong; I could see the Mayflower's bow at that time; can't say how far off it was at that time; when I first saw the boat she was probably one hundred feet off; (on being read to witness, he desires to state that the Mayflower was closer to the Dove than one hundred feet when he first saw her bow;) she was, I guess, about the same distance off when the bells rang to back; when the bells rang to back she bore on our port bow, about a point or may be not as much as that; she struck us on our stem, and then raked down on our port side, I should judge twelve or fifteen feet before it caught and held; can't

tell at what angle she struck us, if you want to know it by the compass because I didn't see the compass; don't know whether the Mayflower backed round or went ahead.

THOMAS HALLIMAN. I live in Buffalo, N. Y., and came thence to Detroit to give evidence; have followed the water thirty summers or more; never sailed on salt water; was wheelsman on Mayflower at time of her collision with the Dove; I took the wheel at 6 o'clock p. m.; we were outside the river; can't say how far outside; when we entered the river the first mate told me we should keep down the Canadian shore; I obeyed the order and kept that shore; keeping it all the way as nigh as possible until the collision; the Mayflower in the river was run under check; cannot state her speed exactly;
137 we passed a tow or two on our way down; they passed on our starboard hand; I heard whistles; the tugs answered our whistles; we sounded our whistle; the first whistle we heard from the vessel that proved to be the Dove were two whistles, distinct, as plain as A and B; I mean a double whistle, of two blasts, being one signal; two whistles is for the larboard, and one for the starboard side; we gave a double whistle in reply, and repeatedly afterwards, and was answered with a double whistle five or six times; at the time of collision my wheel was amidships; there was no alteration in my course from the time I heard the first whistle until the collision; the fog was pretty thick at the time of the collision; sometimes you could see the shore, the Canada shore; I saw no light until I saw the Dove's bright light; I did not see her colored light at all until she was right across our bows. I hollered, "where in hell are you going to?" in time to give her man time to stop and back his engine, and to avoid any collision; the vessels hit stem on; I cannot say exactly; our boat went stem on to the Dove; we hit the Dove on the port bow; the Dove ran mostly right square across our bows, across the river, at the time I was hollering, "where in hell are you going?" I could not form any judgment exactly how near we were to the Canada shore at that time; somewhere two-thirds of the river, I should think; I mean two-thirds of the river from the American shore over towards the Canada shore, when the boats struck; our captain sung out to have them run her ashore; I heard them holler "fire;" he made answer that he couldn't run her ashore; (I suppose it was the captain; the answer was made;) our captain sung out to
138 give them a line; the answer was made that he didn't want no line; then the boats separated; the Dove went to the Canada shore; I didn't see that the Dove was afire; I staid about there for perhaps ten or fifteen minutes.

Cross-examined:

Last year I was on the Dean Richmond from June 20th to her last trip. I was wheelsman first; then I went as lookout-man. Before that I was in the Nebraska with Capt. Gibbard as wheelsman. When the Mayflower passed Pointe au Barques I was in bed. Can't say when I turned in that afternoon, say at 12 o'clock. Turned in at 4 o'clock; got up at 8 o'clock, and took the wheel. It was my watch on deck at 12 o'clock. Was at the wheel from 12 to 4. No; not that afternoon. I was not at the wheel from 12 to 4. I was turned in. Can't say where our boat was at 12 o'clock exactly—somewhere in Lake Huron. When I took the wheel at 4 o'clock she was coming down below Pointe au Barques; can't say how far down. I saw the shore coming down. I saw no place on shore, coming down, to identify it. At 8 o'clock our

boat was some distance outside the river—can't say how far. Can't say exactly what time we reached the river; I had no watch. I was not at the wheel from 4 o'clock to the time of the collision; was at the wheel from 8 o'clock to time of collision. From 4 to 8 o'clock I had to stand the "dog-watch." From 12 to 4 I was turned in. Took wheel from 4 to 6; call it "dog-watch." Came on watch at 8. My trick at the wheel would continue from 8 o'clock till 12; my hours at wheel were four hours; and "dog-watch" 4 to 6, and 6 to 8. Can't say how long it was from taking the wheel until we reached the river. I had no watch.

139 Question. Was it half an hour, or an hour, after you took the wheel until you reached the river?

Answer. I cannot say, sir; the weather was foggy when we reached the river; it was not dark at that time, but thick; can't say whether it was fog made it dark, or whether it was the darkness of the night; cannot say whether daylight had closed when we reached the river. I was at the wheel, and we had entered the river when I received the order to keep her down the Canada shore. Our vessel was then down below Port Huron some distance; can't say how far below Port Huron; can't say if it was one mile or ten below Port Huron; might have been more than one, and not as much as ten; suppose it was a mile or more than a mile; know it wasn't ten miles. I noticed Port Huron when we passed; it was thick and dark; we could see lights in passing there; cannot say whether I was at the wheel half an hour, or an hour, or an hour and a half before we reached the river; it was an hour, more or less. The first mate gave me the order to keep the Canada shore down; can't say exactly how many times I have passed through St. Clair River at the wheel; have received this order at different times in coming down from the same man, Si. Woodworth, and from plenty others beside him. The first mate was officer of the deck from 8 to 12 o'clock; that order is a common order with some; we make it a rule; it was a rule with the captain or mate of the Mayflower, but not constant; can't say exactly when they did so before; can't recollect it, but recollect being told of it; can't recollect day or date; they never ordered me to come down the American shore; the next order I got from the mate after he told

140 me to keep down by the Canada shore, was to keep her as steady as I could. He repeated it right after giving me the order to keep the Canada shore; couldn't say exactly what was the next order; I next received an order when we met a tow; it was "starboard;" we were then in the river; I was in the wheel-house.

Question. Where in the river were you then?

Answer. I cannot say how far down the river I was; cannot say what tow it was, nor how many vessels they were. The next order I got was "steady;" we were coming down the river then; it was may be two or three minutes, more or less, after I received the order to starboard; the next order was "steady;" cannot say what was the next order; cannot recollect any other order; I did receive other orders up to time of collision; can't say what they were exactly; might be "port a little," "starboard a little;" recollect nothing more than port or starboard up to time of collision. I did receive such orders; couldn't say exactly when or where I received such orders; it was in the river or coming down; did not see the shore all the time coming down; saw Canada shore when I saw any; couldn't say where; don't remember any point I saw on Canada shore, after passing Port Huron; don't recollect passing St. Clair or Vicksburg; did not see any place that I recollect of after passing Pt. Huron; am not sure we passed more than one or two; think there was

two; we did not run by compass; we don't run by compass in the river; I ran by orders from the mate, the officer of the deck; I would know when the officer of the deck rang the engine bells; he uses a whistle for a bell; I hear it sometimes when it is sounded; three whistles in-
141 dicate to check, one to stop, one to go ahead, to let on steam full head, as many after four as he pleases; four would do as well as a dozen. I went before some man in Detroit to sign a protest; don't remember when or before whom; I was sworn to the statement I signed there; it was read over to me before I signed it; there were no questions put to me.

Question. Did you then state that you reached St. Clair River at about 10½ p. m. of the 31st, and proceeded on our way down the river, passing several propellers and tows bound up; weather foggy, but could see both channel banks?

Answer. I couldn't say the time exactly; it would clear up sometimes so I could see the land; there was no question put to me at all, not one.

Question. Did you sign and make oath to a statement containing what I have read to you?

Answer. I could not say exactly.

Question. Was the statement that you signed and made oath to, true or not?

Answer. The statement I signed was true, to the best of my belief, whether it is that paper you have got I do not know; the fog was not uniformly thick and heavy, but in streaks.

Question. If you could see neither shore, nor any object upon it, could you tell how you were coming down the river?

Answer. I could; could tell whether I was close to it or far away from it, or whether it was the American shore I was on or the Canada shore; I could not avoid looking at my compass coming down the river; when I was steady I would look at it.

Question. How could you tell on which shore you were coming down?

142 Answer. When I could see the land; when I couldn't see the land I would go by the compass.

Question. How could you tell, when you could not see the land?

Answer. Steady with the compass until I got hold of the starboard again.

Question. What course do you come on down the river?

Answer. I never steered a course in the river. I was never given a course in the river.

Question. Now, you have sworn that you do not run by course coming down the river; that you saw neither bank, nor any object upon the bank, after leaving Port Huron. How can you tell on which shore, if either, you came down the river?

Answer. I can tell when the Canada shore is on my larboard hand when I am coming down the river. I suppose I can also tell that the American shore is on my starboard hand.

Question. Under these circumstances, can you tell which shore is nearest to you?

Answer. Yes, sir.

Question. How can you tell?

Answer. Seeing the one shore clearer, plainer, more distinct than the other.

Question. Can you tell any other way?

Answer. No, sir.

Question. Did you see any other boat other than the tow you have mentioned until you saw the Dove; if so, what one was it, and where was it?

Answer. I cannot tell which one nor where.

Question. How long after you passed this tow did you see the Dove?

Answer. Could not say.

143 Question. About how long?

Answer. Couldn't say exactly.

Question. How long after you passed the tow was it before you heard the whistle of the Dove?

Answer. I cannot say.

Question. Did you first hear her whistle or see her light?

Answer. I saw her light.

Question. How long?

Answer. It might be half a minute, a second, or two seconds.

Question. How were you heading at that time, when you heard the whistle?

Answer. I could not say, only down the river.

Question. Did you notice the compass at that time?

Answer. No, sir.

Question. Did you notice the shore at that time?

Answer. No, sir.

Question. How far off was the light at that time?

Answer. I cannot say, sir.

Question. Have you no judgment how far off it was?

Answer. No, sir, I formed no judgment.

Question. Was it a quarter of a mile off?

Answer. I cannot say, sir.

Question. How was the fog at that time?

Answer. The fog was thick.

Question. So thick that you could not see her colored lights?

Answer. I could not.

Question. In your judgment, was it two hundred feet away at the time?

Answer. I could not say, sir.

Question. Was it close by, or a good way off?

144 Answer. It seemed pretty close.

Question. What order did you receive about that time, if any?

Answer. None, sir.

Question. Did you receive any order after you saw the light, up to the time of the collision?

Answer. Not to my knowledge.

Question. Did you stay at the wheel until the collision?

Answer. Yes.

Question. How far was the Dove off when you saw her stem or hull?

Answer. I cannot say, sir.

Question. More than 100 feet?

Answer. May be more or less; I cannot say, sir.

Question. Did you see either of her colored lights before the collision?

Answer. Yes, when she was under our bow mostly.

Question. How close was she, and which lights.

Answer. I could not say.

Question. You said the wheel was amidships; how long had it been amidships?

Answer. It might be 2 or 3 minutes, more or less.

Question. How long prior to this time had you moved your wheel?

Answer. Two or three minutes before she struck, as I put it amid ships when he was a backing her.

Question. Did you do that under any order from the officer of the deck?

Answer. I cannot exactly say.

Question. Was that before or after you saw the light?

Answer. After I saw the light.

145 Question. How long after?

Answer. Could not say exactly. I saw her head-light before I saw any green or red light on her.

Question. What was the last order you recollect having received before the collision, and how long before the collision was it given?

Answer. Can't say what the order was or when.

Question. How did the two vessels come together?

Answer. I can't say. I was a good piece from her. She was under our bow. I couldn't see where she hit her; I could not say.

Question. Where was the officer of the deck when you hailed the other vessel?

Answer. On the pilot-house.

Question. Did you have any conversation with the officer of the deck about that light? If so, what was it?

Answer. I had none.

Question. Did you hear anything said about that light?

Answer. No; I heard no remarks passed on it.

Question. Who was there with you?

Answer. There was no one there.

Question. Any one around in sight?

Answer. The captain was on the pilot-house with the first mate.

Question. Anybody else there with the captain and the first mate?

Answer. I did not see the watchman at that time.

Question. Who do you mean by the watchman?

Answer. The look-out man.

Question. What was his name, and where was he?

Answer. I believe his name is Dave; can't say where he was.

146 Question. How long before had you seen him?

Answer. A few minutes before that.

Question. You say the Mayflower hit the Dove nearly stem on. How close to the stem of the Dove did you hit her?

Answer. I don't say she hit her stem on. I never saw where she did hit her, since or late.

Question. How did you hit her, then, and how did she hit you?

Answer. It seems she was running across our stem.

Question. When you first made the light of the Dove, how were you heading, and how did the lights bear?

Answer. I was heading down the river; the light bore about 2 or 2½—two points on the starboard hand.

Question. And how long was that before the collision?

Answer. I couldn't say exactly; not a very long time.

JOSEPH H. MERRILL.—Have been a steamer-engineer since 1849; was engineer of the propeller Mayflower at the time of her collision with the steamer Dove. I found fog when we had proceeded very near down to the first island in the river—Elk Island. I think after entering the fog our vessel was run under a check a portion of the time; she was run under a check when the fog was more dense than at other times; the whistle was sounded very often after entering the fog; we passed two

or three tows ascending the river; whistles were blown at each passing at the time they were discovered, and also at intervals during the time we were going down the river. I heard two whistles
147 shortly before the collision from the direction of our starboard side, that would bring it from the American shore. It was a whistle of two blasts. I think the Mayflower answered according with two blasts. I think there were three responses passed from vessel to vessel. I won't be certain.

Question. State whether you saw any light; and if so, in what direction?

Answer. I saw a light on our starboard-hand side. I was standing in the after-gangway, on the starboard-hand side, when I saw the light. I should judge that the Mayflower was then going at the rate of five (5) miles an hour through the water. The maximum of our speed is about ten (10) miles. We were drawing somewhere in the neighborhood of twelve (12) feet of water, more or less—I couldn't say.

Question. What order, if any, did you then get in reference to avoiding a collision?

Answer. All the order I got was to "check," "stop," or "back" the engine. I think, and am pretty sure, there were three of the double whistles had preceded such order; am sure of that, and how many more I could not say. The order was communicated to me by a small steam-whistle. The first order was to check her; I checked her. The second order was to stop her; I didn't wait to stop. Before I could get the throttle shut off the order came to back her; she worked with a link; I pulled the link right over and opened the throttle; she commenced backing; had judged she had made about twenty (20) turns backing before the collision. After the collision the Dove drifted right alongside of us. Both headed down the river. The Dove, as we were going ahead, I think, her momentum was stopped; she came right
148 alongside of us, and then went right up on to the bank, as I supposed. I refer to the bank of the Canada shore. She drifted right round our other side on to the bank; should not think it was much over four minutes between the collision and the grounding of the Dove.

Cross-examined:

I live in Cleveland; can't inform you where I am going now; don't know on what vessel I am going. I have left the Mayflower; can't inform you why I left the Mayflower, unless it was one of Capt. Woodruff's whims. I was superseded without reason; I was so superseded on the trip down when we sunk the Dove—not on my arrival here. I left the Mayflower two weeks ago last Saturday evening, (June 5.) I was first engineer on the Mayflower; had been such first engineer in the neighborhood of two months. I was licensed in Cleveland. On the trip of the Mayflower in which the collision occurred I took no note of the time in which we left Chicago, and therefore cannot answer it. On such trip down I think we passed Point aux Barques at 3 o'clock p. m., as near as I can recollect. We were loaded with corn and flour; I think a full load. Don't remember the time we reached the head of the river near Port Huron, where we came into the river; I think it was in the neighborhood of 9 o'clock p. m. We didn't stop at Port Huron that night; don't know at what time we passed Port Huron; from the time we came into the river until the collision I was around the engine. Don't remember any one who was with me except the fireman, and the second engineer was not around there that evening. We do not carry

more than two engineers. I work my engine on the main-deck. The engine-room opens on the starboard side; when standing in the
149 engine-room I can see out on the starboard side. From where I stand when working my engine is about eight feet to the ground-gangway. The gangway is aft from where I stand; it is about three (3) feet aft; I can see aft on the starboard side when I am working the engine. I noticed when I came into the river that night I saw the banks of the river. There was no incident I remember to call my attention to passing Port Huron. I did not notice Port Huron; after coming into the river the next object outside of the propeller that I noticed, to pay attention to, was the fog; I also saw the banks of the river along; occasionally I saw tugs going up; didn't notice any particular tug or vessel. The first order I received after getting into the river that night was to "slow the engine." This was just above "Elk Island," in the river; cannot inform you how far that was from place of collision; guess it was about fifteen (15) miles.

The next order I don't remember, nor can I inform you the next order; it was either "stop" or "check," or "work her strong." I received all those orders after I came into the river, before the collision We were carrying an average of about forty (40) pounds steam; our maximum in running is fifty-five, (55;) we are allowed by law to carry sixty-two, (62;) our speed through the water, with fifty-five (55) pounds steam, is about nine and a half (9½) miles an hour. We reduced our steam from fifty-five (55) pounds to forty (40) directly after the first time of checking her. This was probably an hour or an hour and a half before the collision. I have no distinct recollection either as to the time or place of reducing the steam. I had noticed the tug before I received the signal to check; had noticed it five (5) or ten (10) minutes
150 before. When I noticed the fog I was in the gangway. Can't tell how many times I was at the gangway after we came into the river, before the collision; cannot say about how many times; I have no idea at all. From entering river until collision I can't say how many vessels we passed; should judge we passed five or six, (5 or 6,) probably more. We passed them on the port-hand side; we were running down on the starboard-hand side of the channel. I saw these vessels out through the gangway, on the port-hand side. I did not go to the port-hand gangway; I stood, when I saw them, in the starboard-hand gangway, or thereabouts. Don't remember that we passed any steam-vessels, without it was tugs with vessels in tow. Can't tell how far apart were these vessels that we passed; they were two (2) distinct tows; cannot state how far apart. We passed the first tow right abreast of Elk Island, I think, and after we got into the fog we passed the next tow below that same place; have no idea how far below—probably three (3) or five (5) miles—I cannot tell exactly. I heard the whistles when we passed the tows. Didn't leave my engine to go and look when I heard these whistles; couldn't see them and stand by my engine. We don't call it "leaving the engine" to go to the gangway. Can't say how long before the collision we passed a vessel; should judge it was half or three-quarters of an hour. Stopped at Marine City after the collision. I saw no vessels after the collision or before reaching Marine City. I went to the gangway after the collision, or before reaching Marine City; it might have been once, or five, or ten times. I observed no vessel after collision until reaching Marine City, that I remember of; should remember, I think, if I'd seen one. Didn't see a tug, that I remember of.
151 There were whistles going all the way down; we passed several, judging by the whistles. Cannot say about how many signals

we exchanged between collision and Marine City. There was two (2) any way; might have been four (4) or ten, (10;) I think they were double blasts, but not certain about it. Don't know that I could have seen them if they had passed on our starboard hand; would have been more likely to have seen them if they'd passed on port hand. I was busy around the engine when we exchanged signals. Don't remember whether I went to the gangway to look. Can't tell how near together were the whistles we exchanged after the collision. The signals in passing vessels prior to the collision were, I should judge, about a minute apart. I signed the protest in this case.

Question. Did you not state in such protest that you reached St. Clair River at about 10 o'clock p. m. of the 31st, and proceeded on your way down the river, passing several propellers and tows bound up, weather foggy?

Answer. I swore to the protest and to that statement as true; cannot tell how long it was before the collision that I heard two blasts of the whistle; should think the blasts were about a minute apart—I mean that the two (2) separate signals were so separated; don't remember whether the Dove or the Mayflower sounded first. Standing where I stood, if the signal was sounded when the vessel was dead ahead of me, I could not tell over which bow it was; could not tell if it was two (2) or three (3) points over her bow; was in the habit of going to the gangway and looking out, if I hear signals; I hadn't taken the pains to go there particularly to observe the tugs
152 and tows we had passed while coming down the river, before the collision, more than once or twice; do not know that I did it, after the collision, when I heard signals. When I first heard the signals I could not designate any place where I was standing; had probably had an order five minutes before this time; this order was to "work her stronger;" I obeyed that order. When I heard the signals from the other boat, I stood in wait either in the gangway or between the gangway and the engine; I heard the signals passing between the two boats; I stepped to the gangway and looked out; wasn't standing at the gangway when I got an order, was standing close to the engine; the order was "check her;" it was given in three distinct whistles; I answered it by checking the engine. I next received one (1) whistle. (Witness first said "two," and then corrected it immediately to "one."—Commr.) I think that is the way Mr. Woodworth put it. I next received two (2) whistles; they were so close you could hardly distinguish them; I didn't go to the gangway between the time of the three whistles until I received the one whistle; it might have been five and it might have been ten seconds between the three and the one whistle; it followed pretty close. When I received the three (3) signals I reached over and took hold of the lever; I did not leave the engine at all, but kept my hand ahold of the lever; don't think the Mayflower blew one whistle after receiving the signal from the Dove; wouldn't say she did not. When loaded as we were coming down the river, carrying fifty-five pounds steam, our engine would make sixty turns a minute; never timed her revolutions with forty pounds steam; think she would
153 make forty-five or fifty, somewhere along there. When I received the one and the two bells so closely together I anticipated a collision; from the time I received the three whistles (to check) until the collision, I did not leave the engine at all; after our engine was reversed I took no particular notice of the number of revolutions backward our engine made; my statement of twenty (20) is merely an estimate.

Question. How far, in your judgment, would the Mayflower run, com-

ing down the river, loaded as she was that night, and on that speed, before her headway would be stopped by backing her?

Answer. I should judge about twelve hundred (1,200) feet; she had a New York wheel on, and they don't back very well; it might have been 10, and might have been 20 seconds before receiving the order of three whistles, when I was at the gangway; the signals back and forth, between the two boats, had called me to the gangway; this was not when I first heard the signals; can't tell how many signals I had heard when I went there; my curiosity was aroused at the time I went there; there was nothing at all unusual about the signals; I had more time then to spend than after the collision, when going to Marine City; after the collision, I had to go below to see if she was making any water; while I was below, my engine ran itself; when I looked out at the starboard gangway, I couldn't see much of anything but fog, it was quite thick close to the water; I did not, when I first looked out, see anything else but the fog; I stood and kept looking; I stood leaning over the gangway; I saw what proved to be the Dove's light, after a spell; I did not stand and watch it, but went back to the engine; next left the engine when I went below to see if she was making any
154 water; cannot tell what light I made of the Dove; it would be a hard matter, through the fog, to tell whether it was bright, red or green; it would be hard to tell how far off it was; should think she was 400 feet off, it might have been more; it showed over our starboard bows; I could not tell you how many points; it was so foggy that I could not then have told it was the light of the Dove, and not a light on shore. I have had 1st engineer's papers ever since the law licensing engineers first came out; was in the tug John Prindeville a spell last year; was on no other vessel last season; was on the Prindeville a little over two months, I believe; the season before, I was up at Marquette putting up machinery for a mine; in 1866, I was on the propeller Ironsides, up to August 7th; wasn't on anything else that season, but went to Marquette; was in propeller Ironsides the entire season of 1865; on the Mayflower the night of the collision; the 1st mate, named Woodworth, a brother of the captain's, was on my watch; he took the deck after tea, I think, at the same time I went on watch; we took tea at 6 o'clock or thereabouts; we were somewhere near "Bark Shanty" when I went on watch; I think we passed Elk Island on the Canadian side, can't state positively; I knew within 15 or 20 minutes when we passed Elk Island, wouldn't swear to it more definitely than that; when I was looking out of the gangway, shortly before the collision, I saw no tall spiles; have heard the mate say nothing about tall spiles since the collision.

Question. Have you had any conversation with the mate, or heard
155 him make any statement in relation to some spiles near to the place of collision; if so, what was it? (Taken subject to objection of libellant's proctor, as not part of the res gestæ.)

Answer. I have not, sir; our second engineer is my adopted son; he goes by my name, Thomas Merrill; can't give you the name of my fireman; it is not one time out of twenty that I know of firemen's names; the second mate was a son of Captain Woodworth; don't know who was at the wheel nor on lookout.

JOSEPH BROWN.—I live in Sombra, Canada; I remember the occurrence of the collision between the "Dove" and "Mayflower;" my house was from two hundred to four hundred feet from the water's edge, on a reasonably high bank, about twelve to fifteen feet high; on night of

collision I went to bed about 9 o'clock p. m.; there was no fog on the shore, it was confined to the central portion of the river; did not hear the whistle of the boats that night before the collision; I was roused by an unusual noise; rose at once; as soon as I waked up I stepped to the front door; immediately, on opening the door, I saw the lights of *of* the two boats close on the Canada shore; I immediately dressed and went on the beach as near as I could get to them; in perhaps five minutes from that the passengers came ashore in a yawl-boat and I built them a fire, assisted them about an hour and then returned home.

Question. State whether any of the crew or officers made enquiry as to which side of the river they were on.

(Objected to as incompetent, no proper foundation having been laid.)

Answer. They did; Mr. Robinson was one, and others of the crew whom I did not know, asked me on which side of the river they were.

156 Question. Where is your house relative to Record's dock on the American side?

Answer. We consider it just opposite as nearly as possible.

Question. State whether you were enquired of a few days after the collision as to what you knew about the case, and as to giving testimony about it; by whom, where, and what was said.

(Objected to as incompetent.)

Answer. I was; by Mr. Gallagher, on the steamer Dove; he wanted to know what I knew about it; I answered him, that when the collision took place, I noticed the boats close on the Canada shore.

Cross-examination:

I am a farmer; have lived in Sombra since March 9, 1869; the road which passes my house is nearly four rods from the river bank; my house is on the eastern side of the road, and about 45 to 50 rods back from the road; it is a large, square-built, brown-colored house fronting on the river.

Question. You have stated a conversation with Mr. Gallagher on the "Dove" after the collision; did you not state to him in that conversation that your house was from one-half to three-quarters of a mile from the shore?

Answer. I had no need to, as he could see my house from where we were standing; nothing of the kind took place; my house is called the "Cole farm;" it was built by Mr. Cole; I slept in the lower story, in the south end of the house; the bed-room is a rear room; the noise that roused me was unusual; I could hardly account for it until I went to the door; heard the cries, and saw the boats; when I was satisfied that it was that which waked

157 me up; I went to the front door without dressing; my wife was opening the door as I got their; it couldn't have exceeded half a minute from my getting up that I looked out of doors; the first noise I distinguished after the noise which disturbed me, was the cries of men; we had to look in a slanting direction from the house down to the river; we followed the road down to the bridge over Clay Creek; the boats were a little below this bridge; Clay Creek bridge is 50 rods from my front gate; it was from the bridge to the shore opposite to where the boats lay, about 30 rods; it was 8 rods from the shore to where the boats were; when I stepped to the shore I saw several lights; they were moving slowly; seemed to be settling down the river; couldn't tell whether they were moving to the shore or from it; the river there, after you get to the boats, inclines a little out to the west; before you get to the boats it is a little square; there was a fog that night, but none between me and

the boats; couldn't tell which were the heads and which the sterns of the boats; but they seemed to be moving down the river very slowly; the lights were the main objects; I could see an object also before me, but could not distinguish the hulls of the boats; knew the boats were very close, as I am so well acquainted with the shore there; don't think it was half a minute from first hearing the crash until I was out of bed; I ranged along some little trees there and saw the lights just moving along the tree to the north; the tree was in my front yard; the tree stood a little to one side of front door, nearly even with the corner of the house, and about a rod and a half from the house; if I continued
158 the line from my door to those trees, and thence to the lights, and thence across the river, it would take it a long ways below Record's dock; between one-half and three-quarters of a mile below Record's dock; stood a very short time at the door; came back and dressed in great hurry at once; from the time I heard the noise it did not take me ten minutes to get down to the boats; when I got to the bank the lights had parted, and one boat, (the Mayflower,) was going down the river; the Dove, when I got there, laid with her stem on the beach, and her stern appeared to have swung around a little up the river; the Mayflower had got down past John Bury's dock; she did not come back; am pretty sure Mrs. Robinson enquired of me on which side of the river they were; she disputed with me considerably about it; she was a passenger on the boat; she appeared to be fully dressed.

(To Mr. Russell:) Have lived on the American shore, right opposite my present house, about 14 years.

(To Mr. Brown:) I knew Mr. Broadbridge, the mate of the Dove; knew no others of her crew.

ANNA BROWN.—Am wife of preceding witness; went to bed on night of collision about 9 o'clock; I was wakened up by the whistle of the boat before the collision; I heard the boats whistling, answering each other back and forth, as I heard numbers of times before; can't say they blew two whistles each or one each; it almost seemed to me it was one whistle, but I cannot say for certain; I thought one of the boats was going down and that they had passed each other, before I heard the noise; I was wide awake when I heard the noise; wasn't very well and didn't sleep very sound; the moment I heard the noise I jumped
159 out of bed and ran to the door; heard the folks hallering as I got to the door; I could only see the lights of the boats; couldn't see the boats because there was a fog; the lights were on the Canada shore; they were a little below my house; they were right to the Canada shore; I remained at the front door; didn't leave the house; my husband was just right behind me, as I got to the door; I saw lights of both boats.

Cross-examined:

The noise I heard was the collision of the boats; I thought, when I heard it, it must have been two boats colliding on account of the whistling; I said to my husband, "There's two boats and a collision, come to the door quick;" and before I spoke he was there; couldn't have been half a minute after the crash before I got to the door; the lights, when I saw them, were just moving, very slowly, down the river a little; they were bright lights; couldn't see any colored lights on account of the fog; couldn't see any lights except those that were high up over the fog; couldn't see the hull or body of the boats; we could see right to the river from our house; I stood at the door when husband was chopping; remained there an hour; they moved a very short time only.

CALVIN A. BLOOD.—I live in Marine City; am deputy collector of customs there; remember the night of the collision of the Mayflower and Dove; was down on the dock at my place when the Dove passed up; there was some fog on the shore at that time, but not soo much as there was on the water; after the Dove passed up, I was engaged in going to propeller Plymouth; went on board of her; while on
160 board of the propeller Plymouth I heard crash of collision; was standing on her starboard side; she headed up the river; I was standing on her upper deck; have tended that same dock since 1859, except the three last years, snd was there during that time pretty often; I thought when I heard the crash that it was some boat coming down, which had run into Thomas Bury's dock on Canada side; from the time the Dove left my place till crash of collision, can't state time exactly, should estimate the time at ten to fifteen minutes; might have been longer, couldn't say; from where I was standing to Bury's dock is a little less than one and a half miles; was down at river when Mayflower came down after collision, and took her lines; saw the Mayflower's captain when he came in.

Cross-examined:

Can't say if I was at the Dove's dock when the Dove passed up; think I was; saw her when she passed my dock; the Plymouth arrived a little bit before the Dove came in; I was on the upper dock; she stops down below.

Question. If you cannot recollect whether you were there when the Dove passed, how can you recollect how long the collision was after the Dove passed?

Answer. I was there when the Dove passed the upper dock. She was near enough to the dock for me to tell it was the Dove; she ran in pretty close to the Plymouth, which was lying there at the time, and passed on up; I didn't follow her with my eyes; lost sight of her in one or two minutes after she passed; between that time and the time I went on deck I remained in the boat until I heard a tow coming up; went outside to see it; was a short time inside—long enough to take a drink—perhaps five or ten minutes; took only one drink; couldn't see
161 anything of the Dove after I came on deck; didn't see any more of her after she passed up; didn't even think of her. From my dock to Record's, on a straight line, is about three miles, but I'm a poor judge. The channel at Record's dock is three-fourths of a mile wide.

Question. Can you tell, with any accuracy, on which side of the river the crash occurred, at a distance of three miles, through a fog so thick that you couldn't see either boat?

Answer. I judge, myself, that I can tell very near what dock she stood at on the Canada side. The crash occurred very soon—almost immediately after the tow passed up—a minute or two, perhaps; couldn't see the tow when the collision occurred; think it was out of sight.

Redirect examination:

Question. Before you heard the noise of the collision, did you hear the signals passing between the Mayflower and the Dove?

Answer. I heard whistles passing; was not paying particular attention.

WILLIAM ROBINSON.—I am a mariner; have been a mariner 13 years; was wheelsman on the Dove at the time of the collision with the Mayflower last summer; Thomas Dumont was on pilot-house from the

time we passed the flats till we got to Marine City; I was at the wheel from Detroit to Algonac; while at the wheel I got my orders from Tom Dumont.

Question. State who requested Dumont to act as pilot, and what reason was given why he should act as pilot.

(Question objected to as incompetent.)

Answer. Capt. Sloan requested him to act as pilot, and stated that he (D.) was a little better acquainted with the channel than he
162 (Capt. S.) was; think Capt. Sloan handled the boat, and took her alongside the dock at Algonac; cannot be certain.

Question. What did Sloan say when he spoke to Dumont about his not being familiar with the navigation of the river?

(Objected to as being without proper foundation.)

Answer. Sloan said Dumont was better acquainted with the channel than he was; from Algonac till the time I turned in, the Dove passed up the river at her natural speed, every day running; I turned in from 5 to 7 minutes before the collision.

Question. State whether, shortly before you turned in, there was any change in the course of the Dove, and whether any orders were given to the engineer, and what reason was given?

Answer. I don't know if her course was changed or any orders given. I didn't hear any.

Question. Before you turned in, was there any indication that the vessel was in shoal water, and was anything done in consequence of it?

Answer. Not before I turned in, sir.

Question. Was there any such after you went to your room, previous to the collision?

Answer. There was; heard bells; check; stop; back; supposed they were at Record's Marsh, or near there; after stopping or backing I do not know what course was then taken.

Question. Did you hear any order to the engineer to go ahead?

Answer. I heard one bell ring "to go ahead," and four bells for "all right."

Question. What do four bells mean?

Answer. As I understand, four bells mean that the boat is all right; or to hook her on.

163 Question. What effect does that order have on the speed of the vessel?

Answer. Don't know that it has any effect; engineer lets her run along as he sees fit.

Question. Did you hear after that and before the collision, any order to check?

Answer. I did, sir; can't say how long before; heard "check," "stop," "back," and the engine stopped again, an instant before the collision took place; my room was on the starboard side of main deck, forward of the wheel; I did not get asleep from the time I got to my room until the collision; when the crash took place, I got up, dressed myself, and went out on deck; I had not my pantaloons off; when I got out we weren't on either shore, but in the river, and two-thirds of the way across from the American shore.

Question. When you fetched up on the Canada shore, could you then see the lights of the Mayflower and her hull, aad how near should you judge she was?

Answer. Could see her lights, and could see her hull indistinctly; am not good at distances, but think she was from 500 to 1,000 feet; might be 1,000 feet distant from our vessel; she was a little bit below our ves-

sel; cannot say what distance the Mayflower was out from the shore at that time; when we were lying ashore I could see both the Mayflower's colored lights and her bright light.

Question. Would that indicate that the Mayflower was heading towards the Canada shore?

Answer. Not exactly heading straight on, but partially up the river.

164 Question. What, in your judgment, was the cause of collision?

(Objected to, as witness is not shown to be an expert, and as involving a question of law.)

Answer. There must have been some misunderstanding, or something, between the two boats' signals.

Question. State whether Capt. Sloan was in the habit of making a mistake in the use of the orders "port" and "starboard," and give any instances.

(Question objected to as incompetent, and involving collateral issues and inferences of law.)

Answer. Don't know as he was used to it; he did make a couple with me once, when I was wheelsman; once, heading down to a dock, he meant to say "starboard" and he told me "port;" I asked if he meant "port;" he said "starboard" then; if I had ported, as he ordered, we would have went into the dock; the other instance was about the same thing and was also in coming to a dock; the Dove was blowing two whistles at the time; what whistles I observed were two at a time; didn't pay much attention to the Mayflower's whistles, although I heard them; I saw Mr. Dunn come out of his room as I was putting on my boots after the collision, and was standing in my room door; looking out at that time, on the port side, a man would be looking nearly up the river; I saw the witness Brown on the beach, when I went ashore with passengers in the yawl.

Question. Did you hear anything said by the officers or the crew enquiring which side of the river they were on?

(Question objected to as incompetent and without proper foundation.)

Answer. I think Henry Donaldson asked Brown when he went ashore, which side of the river he was on; think it was him; can't be pos-

165 itive; he was a second mate or lookout then; he acted in capacity of second mate.

Cross-examination:

Commenced sailing on lakes thirteen years ago last summer as wheelsman, and have sailed as wheelsman pretty much ever since; when conversation I spoke of between Dumont and Sloan occurred we were just above flats and in the channel; I was in the Dove's pilot-house and he called one Henry and sent him for Dumont; Dumont came up; the conversation took place just outside pilot-house; didn't notice whether any one else was around or not; cannot say whether Sloan came down from pilot-house before conversation; Capt. Sloan didn't, I think, go below when Dumont took charge, but was around there with him; Dumont, when he took charge, went up on pilot-house; he remained there on pilot-house till we went into Algonac; there my watch closed; didn't hear Sloan request Dumont to take charge of the deck a few minutes while he went to get his rubber overcoat; don't remember if he had his rubber overcoat on at that time; don't remember meeting a raft near Herson's Island that night; think we would be over an hour in running from Algonac to Marine City; Dumont got off at Marine City; Dumont is a sailor, a competent pilot, I believe; he is licensed as pilot; in run-

ning from flats to Algonac, Dumont gave me my orders; don't know whether Sloan was then on deck or below; he might have been up there for all I know; I turned in soon after leaving Marine City, about five or ten minutes afterwards; we had got above Gallagher's house about half a mile above the dock before I turned in; didn't take any notice of Gallagher's house; knew, from distance we had run, that we were by the house; when I say she was running at her natural speed after
166 passing Marine City, I don't mean she was crowded, but running at her usual speed; it was foggy when I turned in; the first signal I heard after turning in (our boat having been blowing two whistles all the way up the river) was these some two whistles; the first signal I heard after turning in, five to ten minutes after, was the signal (3 bells) to "check;" the next was one bell, "stop," coming directly after; the next was two bells, to "back." Am confident I heard the signal to back; this had nothing to do with the collision; I heard some of the men say that we had got afoul of Record's Marsh; didn't recognize the river after signal to back; the next was "stop;" this was the second signal to stop; the next was "go ahead;" this was but a little while after "stop;" they all succeeded each other pretty rapidly; then the next was four bells; could tell from my state-room that she was running at her usual speed by the revolutions she was making; cannot tell the number of revolutions she makes; after the four bells I heard the whistle again, two blasts; the next signal I heard was "check;" cannot say how long this was after the four bells, only a few minutes after; this was followed by signals to stop and back and then to stop; the crash followed an instant after the bell was rung to stop; as I came out of my room I went on to main deck and up the main after-stairs, the principal stairs for passengers; these brought me out on the promenade deck, aft; couldn't see either shore; can't say which direction the vessel was heading just then; being acquainted with the river and judging from the time it took from starting ahead until we fetched up in the mud, I judged we were then two-thirds of the way across the river; I went on promenade-deck; her engine was stopped; she had been backing a few minutes
167 before; she started up directly after I got out on deck; couldn't tell which way her stern was pointing at that time; while she was running towards the shore, I was lowering away the port boat; no one ordered me, but as I came out I heard the order to lower away the boats, and thought it was my place as much as any one else's; the boys had preceded me, and had her swung in the cranes; as I came on deck I went right for the boats at once; I helped lower this boat and got it into the the water; about time of getting boat into water the "Dove's" bow was on the bank; we were some time lowering boat into water as our afterfall got afoul; it took us perhaps a couple of minutes to clear it; the boat was in the water before the engine stopped; there was no one in it; I think it took from five to seven minutes from the time the Dove's engine started ahead till she struck the bank; her engine didn't stop as she struck the bank; she was moving very slowly in running on to the bank; didn't see the bank before we struck it; didn't notice the Mayflower as I came out on deck, but did a few minutes after; I was then standing on the port quarter; when I saw her she was on our starboard side, and she raked right along that side; we were moving ahead then; she was below us, and was heading partly on us; that is, she lapped on to us as we surged along by her; her stem touched our starboard side; I had heard whistles before the collision; think it was two whistles, two single blasts; did' pay much attention to them; I live in Marine City; Capt. Woodruff got me to come down here; never talked particular with

Henry Donaldson about this collision; talked with Capt. Woodruff about it a couple of times, when he told me he wanted me to come down
168 with him; the mistakes I spoke of as being made by Capt. Sloan were made in 1867, but I cannot give the dates, as I never expected to be asked to testify about them; the Dove wasn't checked as I remember from leaving the flats till getting to Algonac; but I can't say as to this, as I was attending to steering the boat; don't remember if it rained or not that night; don't recollect meeting a raft with a big fire on it near Hursen Island that night.

Redirect:

Question. When the Mayflower raked you on your starboard side, as you have testified on cross-examination, had you backed out into the river and gone forward again on the port side of the Mayflower?

Answer. We backed away from her the second time; the first I saw of her was when she surged ahead, and was on our starboard side.

Question. How far astern do you think you backed the first time after the collision?

Answer. I don't know as I can tell.

Question. When the Mayflower raked you, did you hear Captain Woodruff cry out anything from the Mayflower in regard to the condition of the Dove?

Answer. I heard hollering that the boat was afire, but couldn't tell if it was Capt. Woodruff or some one else.

Question. When you were manning the boat where was Sloan?

Answer. Think he was forward; didn't see him.

THOMAS S. GRAY.—I reside in Sombra, Canada; am about thirty years old; am a wood and general merchant; my house is almost opposite Record's dock, on the American shore; if anything, a very little below; I remember the occasion of the collision between the Dove
169 and Mayflower; I was in bed in my house on the bank of the river, not two rods distant from the water, at the time of the crash; my house is about 8 feet elevation above the water; didn't look at clock or watch when wakened by the collision, but think it was eleven o'clock; was fast asleep when I heard it; it woke me up; it was so violent that everything seemed to tremble; the first thing that struck me was that some boat had run into my own dock; I had a good deal of wood on the dock, and thought it had been knocked down by a boat running in; I got up shortly after.

(The above testimony as to what witness thought is objected to on the ground of incompetency.)

A neighbor came hollering, and I went and put on my clothes, and hurried out a' soon as possible; I saw the lights of the vessels; couldn't tell how far off they were, but thought they were nearer to the Canadian than to the American shore; when I first saw the lights I stood in my bed-room; it was before I had dressed myself; I looked out the first thing I did; I looked out a very short time after I was wakened by the noise of the collision—in a very short time—as I supposed it was my own property that was injured; after dressing myself I ran to see it; we had to go around instead of going the direct way to cross Clay Creek bridge, which made it quite a step to go; there were three of us; I saw passengers ashore making a fire, and others being taken ashore; we assisted them, and found out what boats they were; I wasn't acquainted with any of the officers or the crew, but was with Miss Hyde, a passenger; found it was the steamer Dove the passengers were coming from; am

not certain that when I arrived where the passengers were I saw
170 the lights of the other steamer; it seems to me I saw such lights quite a piece below; there was considerable of a fog; we stayed there quite a while, until they pronounced the Dove to be solidly lodged, and advised the passengers to go back on the steamer.

Cross-examined:

There is a wood-dock directly behind my house; it is about ten rods from the dock to the corner of the house; my house fronts both ways; on the road and on the river the front door is on the road; from my front door to the road is about three-quarters of an acre square; I was sleeping in the lower story, on the side nearest the river—in the lower end next to the river; don't think I jumped out of bed immediately when wakened by the crash, as I was very sound asleep at the time; wouldn't like to say it was as much as one minute from crash until I jumped out; the first thing I did was to look out of window; didn't see the hulls of the boats, but only the lights; don't know whether they were white or colored lights I saw; I am not accustomed to lights, and didn't know as it made any difference; the hulls were obscured by fog, and there were some little trees on the bank which would also have excluded the hulls; the lights were about a little distance below my house; wouldn't like to say quarter of a mile below; I was in such a hurry that I couldn't say if the lights were moving or stationary; if those lights had been very near the Canadian shore I would have been able to tell if I had looked enough, but I just put on my clothes whenever I saw the lights; if those lights had been very near the Canadian shore I should have noticed the fact; they were out a little ways; I dressed as quick as I could after looking out; one Joseph Brown, a neighbor, came
171 hollering to me to get up; I went with Brown to the steamer; was not dressed when Brown came along; he stopped until we all got ready and went along together; when Brown hollered to me I was still in bed; I had not been up before that; I got up in reply to Brown's call; then was the first time I looked out of the window; cannot tell how long that was after the crash; it was very shortly after; don't think I had fallen into a doze after the crash and before Brown woke me up; think I should have got up if Brown had not called; Brown hollered to me what it was; that it was a collision; was sleeping alone; when I looked out of the window I could see no people on shore; don't think Brown said anything more than that there was a collision; almost the first thing he said was he thought he could hear his son's voice; that he could hear them in distress; he was almost breathless with alarm; couldn't tell when I got to the boat whether the position of the lights had changed; Brown might have had time to dress and come down to my house between the time I heard the crash and the time he hollered to me, as he was almost breathless, and said several times that he had heard his son's voice; don't remember if Brown came into the house while there; my mother, sister, and a hired man were in the house besides me; Archibald McKenty was the hired man; he got up and went out with me; think my sister got up; don't think my mother did; can't tell why I didn't get up when I heard the crash and not wait till Mr. Brown came; I suppose I didn't think it was a collision; it was my first summer on the river.

172 Question. If you had thought it was a boat running into your dock, would you have got up immediately?

Answer. That was the very thing I thought it was.

Question. Why did you not then get up at once?

Answer. I suppose I was deep asleep, and was just gathering my senses when Brown came. He understood what it was, and I got right up. I came to live there the preceding January. The servant, McKinzie, was up stairs. He got up about the same time I did. Don't think it is a quarter of a mile from my house to Brown's. I have no gate to my place. Our places are diagonally opposite, about four rods apart; Brown's house is back in a field. The road winds round to the bridge. When you get on the bridge you are quite a piece off the river. If we had gone straight we could have got to the boats much sooner. Think all the passengers were off when I got to the boat. The ladies were all off. We ran down just as hard as we could.

Question, (by Mr. Brown.) Could you tell, from the hasty glance you gave, where the boats actually were?

Answer. I could not tell the very spot they were, but could tell pretty near.

JOHN B. RECOR.—I live in East China, on St. Clair River, just opposite Mr. Gray's dock, in Sombra. My brother was owner of what is known as Recor's dock, now occupied by my brother. On the night of collision between the Dove and Mayflower I was asleep in bed, in my father's house, near said dock. Our house is on a road two rods back from the fence; then the road intervenes. From the fence to the water's edge is near three rods. I heard noise of collision; it woke me
173 up. I got up immediately, raised the window, and looked out. Didn't see anything; heard a noise. The distance or the fog prevented me from seeing anything. I could not see any lights. I was born and brought up at that house. I did not know what it was; supposed it was a collision of some kind. I looked out on the river. Presume if there had been lights near enough I could have seen them.

Question. If two large steamers had been lying abreast of your dock, within their length from your dock, could you, in your opinion, have failed to see their lights?

Answer. I don't know as I could have helped seeing them; that is, if one of the ends of the steamers had been up to the dock. I could see a short distance out.

Question. From the sound which you heard, did you form an opinion as to which side of the river the boats were, and what was it?

Answer. Yes, sir; I did. I formed the opinion that they were on the other side of the river, nearer the other side than our side. Can't say how long I remained at the window; not a great while. I went back to bed again. Could see the water from my window; was sleeping upstairs, in the second story. Can't form any estimate as to how far out I could see on the water; the fog was so thick I couldn't. It was quite light, clear overhead. Don't know if it was starlight or moonlight. There was a fog along the shore, but not so thick as it was out on the river.

Cross-examined:

The south side of our house is almost even with the upper end of the dock. The warehouse we use for storing hay interferes with the view of the river from our house some distance below; it does not inter-
174 fere opposite the house. Besides the hay-warehouse there is a store on the dock. The warehouse is below the store. There is another warehouse still below; no other house on the dock. There was wood also on the dock. These various buildings interferes with the view down the river from our house. Opposite from our house they do not so interfere. If the boats were beyond the buildings, the buildings

would interfere with a view of the boats. If a boat lay in the river, off the lower end of our dock, I could see part of it from my window; at least I could see the masts. If the Dove, laying at Westbrook's dock, was in range, from our house, with the barns, I couldn't see her; I couldn't hear the voices of men after the collision.

Redirect examination:

Question. You have been asked about certain buildings situated on the dock. In your opinion, did those buildings in any way intervene between you and the steamboats Dove and Mayflower, so as to prevent your seeing their lights?

(Objected to by opposite proctor as incompetent generally.)

Answer. No, sir; I don't think they did. I stated before that the fog was so thick that I couldn't see the lights.

Question. In your opinion, were those buildings above or below the range between you and the steamers?

(Objected to by opposite proctor as incompetent.)

Answer. I think they were below a little.

Recross-examination:

Question. From what direction did that sound appear to come; from opposite, below, or above your house?

Answer. From below, I think. I could tell from the sound that they were drifting some.

175 Question. If from below, why would not these buildings interfere with seeing the vessels?

Answer. Because the buildings were on the lower end of the dock, and in order to interfere these buildings would have to be in range.

Question. Did the Dove, the next morning, lie in range of either of these buildings?

Answer. I don't remember, but I think she lay a little above.

Question. Suppose these vessels had laid one hundred feet from the end of Westbrook's dock out in the river, wouldn't those buildings have interfered?

Answer. I couldn't say as to that exactly. When they first collided the sound seemed to be very nearly opposite my window. I am a student in the Commercial College at Detroit.

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177 *Oral testimony in open court.*

JOSEPH RICORD sworn for the Mayflower.

Examined by Mr. Russell:

Question. State whether you reside near what is called Ricord's dock, upon it or back of it.

Answer. Very near.

Question. Describe how your house stands with reference to Ricord's dock.

Answer. My house stands about 150 feet, I think, from the river, a little above the dock—about 140 to 150 feet—I can't tell you exactly.

Question. How long have you lived there?

Answer. I was born there; about 50 years.

Question. Point out on this map which your house is.

Answer. My house is about north from the dock; I think from my house to the dock would be 35 or 40 rods.

Question. Above the dock?

Answer. And 150 feet from the river.

Question. Situated about how high above the surface of the water?

Answer. I don't know as I could tell exactly; probably ten or twelve feet, I should think—probably more—I can't tell; it is quite a rise from my house to the river.

Question. State whether upon the night in question you heard the noise of the collision.

Answer. I can't tell you a great deal about it; I was in bed and got up.

Question. What room did you occupy—second or first story?

Answer. First story.

Question. Front or back side?

Answer. Front, near the roadside.

Question. State from what direction the sound appeared to come?

178 Answer. I could not tell you. I opened the door and went out, heard the noise and a good deal of talking; could not understand what was said, though.

Question. State from what direction the noise appeared to come.

Answer. About southeast from my place; in the direction toward the dock; about southeast, I should think; nearly south, a little southeast.

Question. From the sounds which you heard, did you form an opinion as to which side of the river the boats were, and what was that opinion?

Answer. I looked to see if I could see lights; I stood right at the door; didn't go to the road; stood on the step; I could not see any light; it was a little foggy, thick, and I have a number of shade trees in front *in* of my house and on the bank along the river, right along the fence; I looked a few minutes to see if I could see a light, and by the talk and noise of the crash sounded to me, I should judge, nearly half way across the river; but I could not tell as to that; it might have been nearer, or it might have been further.

Question. Did you form an opinion as to whether the Dove was nearer the other side than this side?

Answer. I don't know as I could tell—I could not very well tell—if it was nearer the other shore than this shore; it sounded to me when I got up and opened the door—it looked to me from my first thought it was near the center of the river; I might have been mistaken.

Question. From the sound?

Answer. From the sound.

Question. Alone?

Answer. Alone.

Question. You could see nothing?

Answer. I could see nothing.

179 Question. How did the sound appear to come, abreast of your house, above, or below?

Answer. A little below my house.

Question. Abreast of your house?

Answer. Below the house, I should think, from the way the sound was, nearly opposite the dock, but I could not say positively; a man getting out of bed and coming out to the door, it is pretty hard to tell.

Question. Your testimony is, then, from the sound, that you thought the collision took place about the center of the river, opposite your dock?

Answer. Yes, sir; that was my first thought when I opened the door.

Question. Have you ever been applied to on the part of the Dove to give evidence here?

Answer. Mr. Woodworth asked me to come.

Question. Have you ever been applied to by parties representing the other vessel?

Answer. No, sir; Mr. Gardner and Gallagher come there awhile after the Dove was sunk and inquired of me if I knew anything about it, and I said to them pretty near what I am stating now, I believe; I was to bed, and didn't know much about it; I got up when the collision woke me up, and went out.

Question. You were applied to by Gardner and Gallagher about the matter?

Answer. Yes, sir.

Cross-examined by Mr. Moore:

Question. Is John B. Ricord your son?

Answer. No, sir; my nephew.

Question. Does he live in the house with you?

Answer. No, sir.

Question. Do you know what wakened you that night?

Answer. I believe it was the collision.

180 Question. You think it was the noise of the collision?

Answer. Yes, sir.

Question. Was your window or door open?

Answer. I opened it when I went out.

Question. Before the collision?

Answer. No, sir; they were closed up.

Capt. NELSON WOODWORTH sworn for the Mayflower.

Examined by Mr. Russell:

Question. Where do you reside?

Answer. Marine City, St. Clair County.

Question. How long have you followed the water?

Answer. 49, nearly 50 years; I should say 39, nearly 40 years; 40 years next fall since I commenced.

Question. How long have you been master of steam-vessels?

Answer. Over 20 years as master, constantly every year as they roll along.

Question. How long have you navigated steam-vessels as master up and down the St. Clair River?

Answer. From 15 to 20 years; I am not certain now the exact number of years, but certainly 15, and I think 20 years.

Question. How long a subordinate officer?

Answer. You have reference to steam-vessels?

Question. Yes, sir.

Answer. I think I was running to Chicago four straight years in a steam-vessel as pilot, as second mate for one year and a half, and then mate and pilot and sailing-master for the balance of two years and about three-quarters.

Question. How long have you been master of the steam-propeller Mayflower?

Answer. I went on the Mayflower two years ago this spring; commanded her the last two years.

181 Question. State whether at the time of the collision she was in all respects in good order, and with her proper number of officers and men.

Answer. I considered the vessel fully manned as the law directs, to make the voyage I was about to make.

Question. State whether she was provided with the proper lights.

Answer. She was.

Question. Tell whether they were in good order, brightly burning.

Answer. I am sure they were.

Question. When did you go on watch?

Answer. I was about the promenade-deck from the time we came into the river St. Clair until we had got down about abreast of St. Clair, in the river St. Clair; it then became that foggy that I considered that there would not be too many on the pilot-house if there was a couple there, so I got on top of the pilot-house and took charge of my vessel about off St. Clair.

Question. Who was on the pilot-house when you went there?

Answer. My chief mate.

Question. About how long was that before the collision took place, and about what distance above the point of collision?

Answer. It must have been about three-quarters of an hour before the collision occurred that I went on the hurricane-deck and stood alongside the pilot-house—about three-quarters of an hour previous to the collision. I went from the promenade-deck on the hurricane-deck, and stood alongside, in front of the pilot-house there.

Question. Who was acting as your lookout at that time?

181 Answer. I don't remember the man's name; the man shipped as lookout was taken sick on the passage down, and I was acting as lookout in a measure. I knew the man was sick, and we were all looking out; that is, I was, and I knew my mate was, because I could see him occasionally.

Question. But did you have some other person to act as lookout in his place—in place of the sick man?

Answer. There was another man called upon, by the name of Glover; he took this man's place, or stood by to do anything he was asked to do; you frequently have to leave a second man at the wheel; for instance, if we wanted the wheel hard over, to get round quick, there is a man sent to the wheel to assist the single man.

Question. Which side of the river did you descend from the time you entered the river?

Answer. As a general thing, we came the Canadian shore more particularly than the American shore; we run nearer the Canadian shore daylight or dark than we do the American shore, from Port Sarnia the whole length of the river.

Question. Is that then general usage and custom of vessels descending the river that they shall keep the Canadian shore?

Answer. I say I think it is; it is mine; it is the course that Chicago propellers, heavy-laden propellers, take, after coming inside of an island called Elk Island; they go between the island and the Canada shore; again, there is a middle current at St. Clair, abreast of St. Clair, near the middle of the river, which causes them to keep close to the Canada shore; and the Canada shore is the shore we keep the nearest to from Port Huron to St. Clair, certain.

Question. State whether you were keeping the Canada shore from the time you went upon the pilot-house, or what shore you kept.

182 Answer. I shortly went from the hurricane-deck, as I heard a whistle off our starboard bow—two whistles—I went from the hurricane-deck to the pilot-house, where my mate stood.

Question. State about what part of the river you went on the pilot-house.

Answer. From the point where I went on the hurricane-deck, right at

that time, I don't remember the name of the place—it is probably about half a mile below St. Chair—half or three-quarters of a mile.

Question. On the Canada side?

Answer. Yes, sir; there I went on the hurricane-deck, about the pilot-house, and from there we kept the Canada shore as close as we could; that is, it was foggy, and we kept that to run by as a guide; if we got off from this shore any distance, we lost sight of the shore, consequently we kept as near as we could.

Question. What is the custom in running, to run by the shore or by the compass?

Answer. I don't run by compass in the river unless it is in certain places; there is one place in the river below here I run by compass if it is thick, dark; that is, I consult the compass for a moment; when we get down to this dock here, about a mile above where the collision took place, (either Bowen's or Hockin's, I am not certain which,) about a mile above where the collision took place, I went on the pilot-house, from the hurricane-deck, on the pilot-house, where my mate stood.

Question, (by the court.) Was it there you heard the whistle?

Answer. Yes, sir; about here is where I heard the whistle; that whistle was probably a mile off or more, heading right along this shore; the sound of the two whistles off my starboard bow full three points, as if I
183 was standing here, and it was off there; I answered him distinctly, and we continued to answer each other.

Question. How?

Answer. By blowing two whistles, the same whistles indicating that I passed up in this way.

Question. Describe that.

Answer. That each of the vessels should pass to the starboard; I pass to the starboard of her, and she pass to starboard of me.

Question. You would pass to what hand of her?

Answer. To the starboard of her.

Question. About how many whistles passed between you?

Answer. Well, from four to six, and I don't know but eight, different signals were given.

Question. When you first heard the whistle, and answered it, about what distance were you from the Canadian shore, and was it distinctly visible?

Answer. The shore was distinctly visible, and I don't think I was over one hundred feet from the channel-bank, keeping as close to it as I could keep.

Question. State when you made a light, and what light, and how it bore.

Answer. We proceeded down this shore, the Canadian shore, as close as we could, blowing two blasts of the whistle, and receiving two blasts of a whistle from the other boat approaching us; and when I saw a light, it was still fully three points to my starboard bow.

Question. What color?

Answer. A white light; I instantly blowed three whistles as an alarm and stopped my engine, and rung to *to* back, which she did at once; the boat continued to have headway; she made probably—well, from 20 to 30 turns backing before the collision took place; she might
184 have been going still, at the time the collision took place, five miles an hour; she might have been going four; she might have been going three, not to exceed five, and probably not less than three; I, standing on my pilot-house looking at this boat, plainly looking at every movement—I could see her lights along aft about a quarter; I

could see the vessel, as plain as I can see you now, swinging rapidly to starboard; so we ranged up, going ahead with our wheel hard aport; we came together on an angle like that, my stem rubbing his stem, so they tell me.

Question. Tell us what you know.

Answer. Our stem struck his stem a little abaft his stem, a trifle, on an angle about that; the vessels, when they came together, my vessel being heavier, shoved his vessel round.

Question. Describe that angle; about what course is she on now?

Answer. By the compass?

Question. Yes.

Answer. My vessel was heading about south a little west, south by west, and the Dove is heading about northeast by east, I should judge nearly northeast, when they came together; my vessel being heavier than she was it shoved her round; the vessels swung round side by side, like that, precisely; we lay touching each other there; we came together like that, swung round like that; and if her engine had been stopped before she hit us, it had not been more than stopped just as she did hit us, (and I think the collision stopped the engine;) it is my opinion, at any rate, when the vessels came together we both stopped, and I never started my engine from the time the collision took place until the Dove was ashore; never moved my engine in the slightest; never made a turn of the wheel from the time the collision took place
185 until after the Dove was ashore; then I found I could do no good, and hove my wheel to port, and went off to Marine City.

Question. When your engine stopped, then your starboard bow lay against the port bow of the Dove?

Answer. Yes, sir.

Question. And the Dove lay heading nearly square to the American shore?

Answer. Yes, sir; about as they do now, as I remember.

Question. And you were heading obliquely toward the Canada shore?

Answer. Yes, sir.

Question. Now proceed from that point.

Answer. When the vessels came together I says to my mate, "Jump right down below and see what the extent of our damage is;" he went below, and a moment after he had gone I looked over that way and says to Capt. Sloan, says I, "Captain, your boat is badly hurt; you better run her ashore;" says he, "I can't work my engine;" says I, "Give me a line;" and he says "No;" and that is all he did say. A little while after that his engine commenced working, and he backed right out into the middle of the river, certainly once his length astern of me, toward the centre of the river, and at that point he commenced hollowing at me to get out of his way; says I, "Go ahead; you will fetch one side or the other." He came ahead like that, came up on to my port quarter, passed me there, and when about there I discovered that his forward room was afire there.

Question. While he was alongside?

Answer. Yes, sir; and I hailed him and said he was afire, and I saw somebody come put the fire out; he still continued on his course running for the Canada shore, and fetched up on an angle of about that —heading a little down stream—must have been heading about southeast.

186 Question. About what distance was the Dove from the Mayflower, or the Mayflower from the Dove, rather, when the Dove fetched up?

Answer. I could not say, only I could see her distinctly; if I was to be asked to judge the distance I should say it would not exceed 400 feet.

Question. After she was fairly on shore, what lights were visible from her?

Answer. All we could see was white lights—see the whole vessel, the cabin of the vessel.

Question. About what distance?

Answer. About the width of the river, I should judge; it as near as my memory serves me it would be a little over five-eighths of a mile—nearly three-fourths; I don't know but it is quite three-fourths; I don't remember now the exact number of feet.

Question. Did you pass vessels coming down the river—ascending vessels?

Answer. We did.

Question. In what manner did you pass those ascending vessels?

Answer. If I remember right we passed most of these vessels that night on the starboard hand; they passed us to the starboard.

Question. Pass any tugs with tows?

Answer. Yes, sir; passed most of them on our starboard hand; they left us to pass by them on the right.

Question. Suppose a vessel lying within her own length—suppose the Dove lying within her length of the American shore, and five of her lengths below Ricord's dock, with a hole in her port bow about eight feet in one direction, eight feet fore and aft, and eight feet up and down; state, if you please, your opinion, as an expert, as to what proper
187 seamanship would require in regard to strand' a boat under those circumstances heading northwest.

Answer. I should think it would be proper seamanship to get her on the bottom in as short a time as possible; with such a hole as that in her it would not make any matter which way the land was, head or stern; I should get her on the bank as soon as I could; I should make an endeavor to get her into shallow water in the quickest possible shape I could; and I think the man that didn't do it would not do right, would not show good seamanship.

Question. State whether you are acquainted with the nature of the bank of the American shore by Ricord's dock—in the immediate vicinity of Ricord's dock, below?

Answer. I think I am, sir.

Question. Refer'ing, then, to the last question, in view of the *the* nature of the bank, state your opinion as an expert whether it would be possible to strand a steamboat situated as the Dove then was upon the American shore?

Answer. I think it would be feasible to get her into shallow water in the quickest possible shape she could be; the more shallow the water the better.

Question. Whether it would be feasible to get her on the American shore at that time?

Answer. Yes, sir.

Question. Would it be feasible, under those circumstances, to strand a vessel with her bow in the mud or on the bottom?

Answer. If I understand your question, I should say it would be feasible to strand her head on—to push her head on.

Question. That is what I mean; under those circumstances, with such a hole in her, would it be good seamanship, in your opinion, to run a vessel to the Canadian side of the river—three-quarters of a mile?

188 Answer. I think it would be very bad seamanship to attempt it.

Question. Give your reasons.

Answer. From the fact that there was a hole, as I understand the men, from eight to ten feet square, I think she would be apt to go down going once her length; she would drop almost with such a hole in her, if there was nothing to prevent the water from flowing in; if the water had free access through a hole of that description, the vessel would drop almost at once.

Cross-examination by Mr. Moore:

Question. You have been present during this whole trial, haven't you?

Answer. Not the whole—most of it; I was not present yesterday.

Question. The owner has not been present?

Answer. He has not.

Question. You have had the charge of this suit, have you not?

Answer. No, sir.

Question. As to preparing the testimony?

Answer. I have not; I have been round and found what I could of proof.

Question. You have sat by the counsel in the case, and *and* made suggestions during the entire trial of the case when you have been present?

Answer. I have.

Question. Hasn't the counsel consulted with you on the examination of every witness on the stand when you have been present?

Answer. When I have been present he has asked me different questions.

189 Question. In other words, you have appeared here as the party really defendant, not on your behalf but on behalf of the owner?

Answer. Solely on behalf of my reputation as a shipmaster; no further interest; no money at stake.

Question. You have no other interest than that?

Answer. Nothing.

Question. Are you still sailing for Strong, the owner?

Answer. Yes, sir.

Question. You are engaged to sail her for the season?

Answer. I *an* sailing her; when they don't want me I suppose they will give me my money and let me go, season or no season.

Question. Did you ask Mr. Strong, the owner of the Mayflower, for a release before the trial of this case commenced of all liability, the consequence of the collision?

Answer. Never, I think.

Question. Said nothing about it?

Answer. Yes, sir.

Question. What was it passed between you and him in relation to it?

Answer. I recollect saying that I had been to sea all my life, and worked like a slave and got a little something together, and I didn't want to feel that he was holding this over my head; he intimated to me that he had no idea of any such thing.

Question. He didn't sign a written release?

Answer. No, sir.

Question. What do you mean, referring to holding this over your head?

Answer. A particular friend of mine, or he wanted to be, came and told me a circumstance that had occurred here a year or two ago with one of the masters who had got into some difficulty.

Question. One of Strong's masters?

190 Answer. Yes, sir, got into a difficulty, and there had been a suit about it; the captain was beaten; Strong had sued the captain and got judgment against him, and so forth; from that I spoke to Strong in regard to the matter.

Question. Had a little anxiety about it?

Answer. Not particularly.

Question. What time did your watch commence that night; in whose watch did this collision take place?

Answer. My mate takes the first watch of the night.

Question. And his watch terminates at what hour?

Answer. He goes on after supper and remains until one in the morning.

Question. At that time you take the deck?

Answer. I take it when I see fit.

Question. What is your regular watch?

Answer. We stand six-hour watches, meal to meal.

Question. When he stands from six to one, you take it from one to six, do you not?

Answer. Yes, sir.

Question. Who was in his watch?

Answer. I was in his watch.

Question. Who else?

Answer. Thos. Halloran, wheelsman.

Question. Who else.

Answer. One Glover, as a supernumerary assistant wheelsman.

Question. How long did you carry that supernumerary?

Answer. I brought him from Chicago.

Question. If your regular lookout had been well, would you have carried him as a supernumerary?

Answer. I probably should.

Question. Did he not pay your lookout a part of his passage from Chicago to Detroit in money?

191 Answer. He wasn't shipped as a lookout.

Question. Did he pay a part of his passage in money?

Answer. He did.

Question. Was that returned to him that he paid?

Answer. It was not.

Question. That answers the question; what time did you get into the river that night?

Answer. Between the hours of nine and ten; I guess eight and ten.

Question. Where were you when you came into the river?

Answer. About deck, on the promenade-deck and in the cabin, round about.

Question. Did you sign the protest?

Answer. Yes, sir.

Question. How soon after the collision was it taken?

Answer. I am not certain.

Question. It is dated the first of June; was it taken on that day?

Answer. It was taken the second, third, or fourth day after the collision.

Question. Wasn't it the next day?

Answer. It might have been.

Question. What day of the month did this collision occur?

Answer. I can't say positive; my memory is a little bad.

Question. This protest says the 31st of May.

Answer. I presume it was.

Question. The protest is dated the first of June; is that probably correct or not?

Answer. I should say it was.

192 Question. Did you not state in that protest that we reached St. Clair River about 10½ o'clock p. m. on the 31st, and proceeded on our way down the river?

Answer. I said about that.

Question. Did you so state in that protest, and swear in that protest, that we reached St. Clair River about 10½ p. m. on the 31st?

Answer. I presume I did, if it is there.

Question. Your recollection of the facts was then as good as now, wasn't it?

Answer. It ought to have been, but the point was here: in making out that protest, I probably wasn't particular about it being five or six or nine or ten.

Question. Wasn't that protest made from your statement to the party who took it?

Answer. It probably was.

Question. And after it was made it was read to you?

Answer. Yes, sir.

Question. And you signed and swore to it?

Answer. Yes, sir.

Question. Did you state in that protest, about two miles above Marine City, and in about mid-channel, we heard a steam-whistle ahead, or about two points off our starboard bow?

Answer. If it is there, I presume I did.

Question. Had you turned in that evening?

Answer. I had not.

Question. Why not?

Answer. Because I was to land at Marine City before 12 o'clock, and the weather was a little foggy.

Question. How was the fog that night, variable or uniformly thick?

193 Answer. After passing the village of St. Clair, the fog became pretty thick, not so but what we could see the Canada shore; I don't think we lost sight of it, of some object on the Canada side

Redirect by Mr. Russell:

Question. Describe, if you please, the injuries sustained by your own vessel, the Mayflower.

Answer. In the neighborhood of $500.

Question. I mean how it was broke, if any; was anything done to it?

Answer. Yes, sir.

Question. What?

Answer. The Dove passed along my propeller's stem, breaking it down back, six or eight or nine or ten feet, am positive; the front part of our stem comes flush here, and there is a piece goes eight or ten or twelve inches forward, (there wasn't a mark, not a scratch of paint on our starboard;) the plank of the Dove run through our plank three or four feet, breaking the plank in, and from the plank on the starboard back knocked the stem off.

JOSIAH WOODWORTH sworn for the Mayflower.

Examined by Mr. Russell:

Question. Where do you live?

Answer. At Wayne, on the Central Road, 18 miles from here.

Question. How long have you been a mariner?

Answer. About 28 years.

Question. How long have you been mate of vessels?

Answer. I have been mate and master of vessels ever since I was 18 years old, without any intermission since.

Question. How old are you now?

Answer. I will be 42 the 8th of next August.

Question. How long have you been in the habit of navigating the St. Clair River?

194 Answer. Most every year since I commenced sailing; that is, I suppose, 25 or 26 years, up and down the river.

Question. How long, at the time of the collision, had you been running on the Mayflower as mate?

Answer. I had been on her two years, off and on, most of the time; part of two seasons.

Question. Has any person on the part of the Dove requested you to appear as a witness on behalf of the Dove?

Answer. Not that I have ever talked of; they never asked me to appear as a witness.

Question. Has any person representing the Dove talked with you in regard to the case?

Answer. I don't know but they have. I have had occasion to go up into Captain Ward's office, and the reason was I was sailing a boat for him last fall, and I called there four or five times during the winter; and I met Captain Gardner one of the times, (I guess it was during that time,) and he asked me what I thought about the case. I told him I hadn't taken much thought on it; that I was going to tell the truth as far as I knew about it. I believe he stated at one time he would bet me a suit of clothes they would beat us. I told him I didn't see how that could be; I didn't know how they could bring it about, but I was going to tell the truth as far as I knew, and it didn't make a great deal of difference to me in money matters who beat, but it would be a satisfaction to me to know we were right on the boat; I was satisfied we were. That was all the conversation of any importance I have any recollection of in the case.

Question. What time did you go on watch that night?

Answer. At six o'clock.

Question. How long did you remain on watch?

Answer. I remained until we got to Marine City.

195 Question. After you entered the river, what kind of a night was it?

Answer. I had no trouble until I got down at Elk Island, and then it thickened up a little; all of a haze on the river, but nothing so that it bothered me any way.

Question. What side of the river did you come down?

Answer. The Canada shore.

Question. Was the Canada shore visible most of the time?

Answer. All the way.

Question. Did you run by compass or by the shore?

Answer. By the shore.

Question. How did you pass ascending vessels?

Answer. I passed any that I did pass that evening on the starboard hand, with the exception of one tow that lay at the dock inside of Elk Island. The tow was laying still; wasn't moving any way.

Question. After it became thick, state at what speed you ran, and why you sounded your whistles.

Answer. After I got down just above St. Clair marshes, I could not see over a mile ahead down the river, and I sounded one whistle and continued to do that until I got down to China below St. Clair two or three miles, two miles I suppose nearabouts, and I heard some boat approaching me ahead, coming up the river, as I supposed. I then blew two whistles, indicating that I was on the Canadian shore, and for her to answer which side she would take.

Question. At that time, how near were you to the Canada shore?

Answer. I don't remember; sometimes from 200 to 300 feet, and from that to 400 feet off the Canada shore.

Question. At what speed had you run after the fog commenced?

196 Answer. I checked the boat after we got below St. Clair, and she had run somewhat checked, under a check, and she had run so until we got down within, I suppose, the docks indicated here, I can't say the name of the docks, until we got down there.

Question. Hockin's?

Answer. The principal dock of those three; Bowen's dock had a large fish-light that showed a glare almost across the river through the fog.

Question. State whether you were running under check?

Answer. We were at that time running under check.

Question. When you blew two whistles to indicate you were passing down the Canadian side, did you hear any whistles in reply?

Answer. I did.

Question. What whistles?

Answer. I heard two whistles answering me.

Question. For what purpose did you blow the whistles, and what information did you receive from the two whistles you heard in reply?

Answer. I heard two whistles and I answered two whistles; the two whistles coming back to me I answered four or five times.

Question. What did you intend by blowing two whistles; what did you intend to convey to the opposite boat by blowing two whistles?

Answer. I intended nothing; this was my impression, my intention was to have the boat keep on the starboard side of me.

Question. What did you understand the two whistles you received in reply to mean?

Answer. That she understood me.

Question. What did you understand the two whistles received

197 in reply signified as to the intention of the ascending boat?

Answer. According to law—I am taught by law that that boat was answering that he understood me to pass on the starboard hand, and he was to pass me on the starboard hand; I am confined to this in my license—the ascending boat is answering the other boat.

Question. How many signals did you receive, your boat; how many did you receive and give prior to the collision?

Answer. It might have been six, it might have been four, and it might have been five; I can't tell; there was more than three.

Question. In what direction did you hear those whistles?

Answer. They were ahead down the river, apparently on the American shore.

Question. How many points on your starboard bow?

Answer. When I first heard them, it was before I got to the wood-dock; we had to haul away to keep away from the bank; the way the river comes round there, we had to come round more out into the bay.

Question, (by Mr. Moore.) What wood-dock do you mean?

Answer. When we were up here I heard the boat's whistles down in here, (referring to map,) and when I was down about here, I had no

Question. How long have you been a mariner?

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Answer. The Canada shore.

Question. Was the Canada shore visible most of the time?

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Question. Did you run by compass or by the shore?

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Answer. They were ahead down the river, apparently on the American shore.

Question. How many points on your starboard bow?

Answer. When I first heard them, it was before I got to the wood-dock; we had to haul away to keep away from the bank; the way the river comes round there, we had to come round more out into the bay.

Question, (by Mr. Moore.) What wood-dock do you mean?

Answer. When we were up here I heard the boat's whistles down in here, (referring to map,) and when I was down about here, I had no

more to say about the boat; then the captain took charge, (Bowen's dock.)

Question. You had nothing more to do with the vessel then?

Answer. No, sir.

Question. State whether you remained on the pilot-house with the captain.

Answer. I did.

198 Question. What light, if any, did you make, what color; and how many points from your starboard or port bow did you make it?

Answer. I made a light which afterwards proved to be the Dove's light. I should think it was three or four points on our starboard bow when I first saw the light.

Question. When the light became visible state what orders were given on your own boat by the captain.

Answer. When I first saw it there was no orders given at all, at that particular time when the light was first seen.

Question. What order was given after the light became visible?

Answer. After we got down to see what the light was, do you mean?

Question. I mean the first order after the light became visible.

Answer. The first order given was to ring to stop and back, as soon as he seen what the light was.

Question. At that time describe about how near you was to the Canada shore, whether the Canada shore was visible, and in what direction you were heading?

Answer. As for me to state correctly and positively which way we were heading by the compass, or anything of that kind, I can't do, but I can tell you to the best of my ability where I think the boat was at that time. I can't tell positive about anything. I supposed that the boat, as near as I could calculate in any shape, was as near the middle of the river as she could be. If I had been called to question for the positive fact on the matter, I should think from what I had seen previous to this she would be a little nearer to the Canada shore, but I could not tell, because at the time of the collision, and for half

199 a minute before that, I could not see either shore, but we had seen it just before it.

Question. State how your wheel was, and how your wheel is at the time of backing.

Answer. It is generally the captain's custom; I have often heard him saying just the minute before he backs the engine, "Put your wheel amidships."

Question. State, if you please, how long after the boat commenced backing the collision occurred.

Answer. I don't suppose it was 10 seconds or 15; I can't tell exactly to a second of time, it was done so quick.

Question. Describe in what manner the two vessels came together there, by the models, or describe them as you please.

Answer. When I first seen the Dove, as near as I could calculate, (I will explain to you in the best of my judgment)—when I first seen the Dove apparently she was heading in about that direction, probably three to five hundred feet off; I saw the collision could not be avoided, and as soon as I could I jumped from the top of the pilot-house. I stepped down two or three steps, ran about fifteen feet from the hurricane-deck to the promenade-deck, (I stepped down four or five steps and jumped the rest of the way,) and the minute I got my hands on the railing of the propeller they came together; I was looking over the bows at the time we struck; they were three or four hundred feet away, may

be more or less, when I first saw them; our vessel was, as near as I could calculate, in the middle of the channel; I could not say whether on one side of the river or the other; as near as I could calculate, when I made calculations on the subject myself, I made calculations she would be in the center of the channel. When I come down the river and stop at Marine City, the object that I have is to keep close to the Canada
200 shore above Bury's dock, in order to come down around and head up stream at Marine City, because most of the propellers go up stream.

Question. You followed the Canadian shore to a point opposite Marine City?

Answer. Yes, sir.

Question. You don't take a straight course?

Answer. No, sir; follow the Canadian shore as near as I can to the channel bank after we get to Bury's dock; when we stop at Marine City I always keep close to Bury's dock and keep the Canada shore until we get up there.

Question. Do you ever take a straight course across from Hockin's dock across the reach to Marine City?

Answer. I don't know as I ever did, to be sure that I have ever taken that course; there are no ranges that I have run by. In the St. Clair River the banks are very bold there; it is not very particular that we keep either side or any side. It generally occurs with me, in steamboating in the St. Clair River, at this particular point at Bury's dock we generally meet something going up or down the river.

Question. Describe the angle at which the vessels hit.

Answer. Those boats must have hit in some such way as that, because I jumped down and saw it; she must have hit her two or three feet from the stem. I seen the whole thing.

Question. You were right up at the railing?

Answer. I had my hands on the side-railing, looking over the side of the boat. I knew the collision could not be avoided, and I went down to see what I should do in order to save both this vessel and the other one.

Question. That is an angle a little greater than a right angle; state what angle that is supposed to be.

201 Answer. I should think that angle on the compass would be about seven points; I should say an angle of 40 degrees.

Question. Describe, if you please, by those models; or, in the first place, was there any hailing or hollowing from vessel to vessel?

Answer. The capt. on our boat hallowed to the master of the Dove "to back her," "where are you going?" some remarks of that kind; and one of our wheelsman hallowed; he was pretty much excited on the matter.

Question. Did you hear any hail in return from the Dove?

Answer. I don't know that I have any positive recollection of any at this time.

Question. I mean at the instant of collision; that is all you heard?

Answer. That is all.

Question. After the collision did you hear any conversation pass between the two boats?

Answer. I did hear the captain sing out to the Dove to run the boat ashore as soon as he could, because she was sinking. The captain said that he could not work his engine.

Question. The captain of the Dove?

Answer. Somebody; that remark came from the Dove.

Question. Did you notice the beam of the engine at the time of the collision—the Dove's engine?

Answer. I think I did.

Question. Was it in motion?

Answer. When I seen her in the distance—a few rods off—I seen her engine working.

Question. Did the captain of your boat say anything else to the Dove besides run her ashore as soon as he could?

202 Answer. I can't remember positive. I heard some talk, but what the talk was I can't tell. I was busy—occupied in other ways.

Question. Describe the manœuvres of the vessel after the collision.

Answer. After the collision the captain said to me: Go down forward and see how much damage is done to her—how bad we were hurt. I went down on the forecastle-deck with a light in my hand, and as I went to go past the windlass (the windlass lay in this way) I hit the lamp against the windlass, and had to run out on the upper deck again to get a lamp out of my room. I then went down into what is called the forepeak—down forward in the lower hole—to see how we were hurt, and, after I had done this, got through down there, and came up to report to the captain how it was, the Dove was just passing us.

Question. Which side?

Answer. The port side. I was coming up in that way. Just on coming up out of the companion-way I saw how it was, and I put my hand on her paddle-box as she was passing. She raked alongside of our bow in that way, and went on that way over onto the Canada shore.

Question. Was your engine working or was your vessel stopped?

Answer. I can't tell whether it was or not. When the captain told me to see what the mattor was I don't know whether she was stopped, backing, or going ahead. I was busy.

Question. About how far from the Mayflower did the Dove ground?

Answer. I should think we were in the middle of the river at the time she grounded—maybe a little more towards the Canada shore. She grounded somewhere down, I suppose, probably half a mile from us or below us.

203 Question. Could you see her lights distinctly?

Answer. I did after she was ashore.

Question. Were you then under way or lying still when you saw her lights?

Answer. We were lying still until she run ashore. The boat was still at the time she got ashore—the Mayflower was; that is, except drifting down the river. The engine wasn't working when I came on deck either one way or the other.

Question. Did you hear any offer of assistance from your boat to the other?

Answer. Yes, sir; I heard the captain say to the captain of the Dove, as I was coming down the companion-way with a light in my hand, to give him a line and he would tow him ashore.

Question. Any answer?

Answer. I think he said he didn't want any more help—something of that kind. Somebody from the other boat made that remark. I heard this as I was going down the companion-way.

Cross-examination by Mr. Moore:

Question. Where was your vessel when your watch commenced?

Answer. She was a little above Lexington, in Lake Huron.

Question. What time did you reach the river?

Answer. It was a little after nine o'clock. I don't recollect what time—somewhere in the neighborhood of nine o'clock, maybe a little after—probably twenty minutes—or maybe near nine.

Question. Who was in your watch?

Answer. At that time the regular watchman had been taken sick, and there was a young fellow in his place.

204 By Mr. Russell. You mean lookout, do you?

Answer. Yes, sir; a young fellow who came aboard at Chicago was to act as lookout-man.

Question. (By Mr. Moore.) When did he go onto lookout in that watch; on the same time as you did?

Answer. Shortly after I found out the man was sick and could not come forward, I went and asked him if he would go and stand as lookout at night.

Question. Who else had you on deck with you?

Answer. There was nobody on deck had anything to do with the vessel but this young man and myself and the wheelsman.

Question. Did you carry a second mate?

Answer. The second mate was below, off watch.

Question. How much fog was there that evening?

Answer. I had no difficulty at all until after I got down to St. Clair, then it thickened up; became thick a little bit, so I didn't consider it safe to run in the river without blowing the whistle; so I blew the whistle from St. Clair down until the time of the collision.

Question. How long have you followed the Canadian-channel bank—all the way from Port Huron?

Answer. There is one little spot as a general thing just below Sarnia we are nearer to the Canadian shore (5 miles below Sarnia) than we are at any other time; from there down I always follow the Canada shore.

Question. Why?

Answer. For the simple reason I believe it is always customary as a general thing for all vessels to follow that shore, but I won't pretend to give anybody else's reasons—I have always done it in my piloting.

Question. How was it about going up?

Answer. I generally follow the same way up unless I am caused to move one side or the other for vessels to pass.

205 Question. You generally run pretty close to Bury's dock?

Answer. Yes, sir.

Question. Don't you generally in coming down there from Bury's dock, or at that point, make the distance as short as you can conveniently and run across?

Answer. Bury's dock is below.

Question. In running from Hockin's dock to Bury's don't you run across the river; cut off as much as you can conveniently, (illustration made upon the table;) do you run clear round here or across?

Answer. I will tell you my experience in that matter: when I come down the St. Clair River I always come down as near as I can in the center of the river, because there we have no trouble with shoal water or the boats smelling the bank; the better way to avoid it is to keep her in the center of the river and then come down here to Bury's dock—that is a point out here; and we generally haul down there when we are going to stop at Marine City, in order to give the boat room to get here.

Question. About what point did you haul out into the center of the river?

Answer. When we came down that way we keep coming up near this dock where the fish-light was, Bowen's dock; we had just passed it, and

we were then down about here; for instance, this is the boat here and this is the light; we had passed these docks. There is another dock, Reynold's, just about there, for instance; it was standing in the middle of the boat; here was a light on this dock; I told the captain there was a light over the stern, right there, a little over her port quarter, probably half a point over or such a matter, and then it shut right down thick again, and then it lit up almost instantly, and then shut down and lit up again.

206 Question. You tell me you saw that light over the port quarter a little?

Answer. We were just passing the dock, and I just seen the light over the port quarter a little.

Question. Could you see either shore at that time?

Answer. Not at the time I was speaking to him, but I did shortly after.

Question. How came you to tell him you saw a light astern there?

Answer. We were speaking about it, and I told him that he just passed the light above Reynold's dock, and it was at that time when I was speaking about it it was so foggy we could not see anything.

Question. Had he just come out there?

Answer. He might have been out there before that.

Question. Out on the pilot-house?

Answer. Yes, sir.

Question. Didn't he ask you where you were, and wasn't that when you told him you saw a light astern?

Answer. He might have said something in that kind of way; if he had asked me I could not have told him.

Question. You did tell him you saw that light astern?

Answer. Yes, sir; and we just passed the light a few minutes before.

Question. State whether you had any conversation about where you were in the river?

Answer. I told the captain we had just passed the light there just a minute before on the upper deck, and I headed her down the river as near as I could, just in the centre.

Question. You told him that?

Answer. Yes, sir.

Question. Did he say to you where he thought you were?

207 Answer. I don't recollect what he did say positively about it.

Question. Refresh your recollection; didn't he say something to you—he thought you were nearer the American shore?

Answer. He might have said something of that kind at the time, but I didn't know, and I know no other person could judge at that time where the boat was, either on one side or the other; he might have said it was at Ricord's dock, but I know he could not know, nor no other living person, on which side she was.

Question. What I want to know is, was there not some conversation about being near Ricord's dock?

Answer. Yes, sir.

Question. Between you and captain?

Answer. Yes, sir; I admit that there was.

Question. State all the conversation there was, as near as you can recollect.

Answer. I can tell the purport of the conversation. I know there was something said about it at the time; he did not and could not see the shore, neither one side nor the other, and I simply told him, after he

made some remarks that he had seen this light, that I had steadied the boat down the centre of the river as near as I could.

Question. Was that at the time he came up on the pilot-house?

Answer. Right away after he came up on the pilot-house.

Question. Had you sent for him?

Answer. No, sir, I think he came of his own accord; I have no recollection of sending anybody for him, and I know I didn't go myself.

Question. Was there any difference of opinion between you and him as to where you were at that time in that conversation?

208 Answer. I think I simply said I could not tell, nor anybody else at that time; when he spoke about it he seemed to think I didn't know exactly.

Question. About where was it you commenced to sound two whistles?

Answer. Before he came on deck.

Question. I think I understood you to say you sounded no whistle until you reached about——

Answer. Until I heard a boat ascending up the river.

Question. And you commenced sounding two whistles about the time he came on deck?

Answer. Just before it; probably I had given two blasts before he came up there.

Question. Who held the whistle-ropes when he was upon the pilot-house?

Answer. I did.

Question. Now you think you had sounded at least three times, and was answered three times; the last time you heard the two whistles in answer, about where was the vessel that answered, do you think?

Answer. She could not have been over 500 feet from us.

Question. Was she in sight?

Answer. She loomed up out of the water as if she had been raised there; seemed as if she had come right up there out of the water. I could see the whole shape of her, and seen all her lights burning, and heading towards us; red, white, and green. I seen every one of her lights.

Question. Hadn't you thought you had passed that vessel or got almost by her by the whistles?

Answer. I did.

Question. Before you saw her?

209 Answer. Before I saw the vessel, her hull; I supposed that we were far enough past the vessel so we could pass down.

Question. How far off was she when you saw the head-light?

Answer. I can't tell; I should think she was far enough to be out of danger. I didn't apprehend any danger when I first saw her head-light; I didn't apprehend anything of the kind.

Question. How long before that time had you sounded the whistles?

Answer. When I first seen the boat's light, I suppose she was off so well that she would notice we were all right going down; next to the last whistle I blowed she had understood us, and I didn't expect she was coming over on the side where we were, and there was no danger of collision or anything of the kind until that instant I seen her come out of the water; it appears we were closer than I thought we were.

Question. Did you sound any whistles at that time when you first made her light and saw her off there?

Answer. I did blow one whistle, and spoke to the captain and said that that must be a boat going up the river on the other side.

Question. Where were you standing?

Answer. Alongside the captain.

Question. Where, on the boat?

Answer. On the pilot-house, alongside of him.

Question. Do you mean one single or one double whistle?

Answer. One whistle when I told the captain that, and before I let go the whistle-strong I blowed two; they were blowed as quick as I could by jerking.

Question. Making three very near together?

210 Answer. Yes, sir; and as soon as it was done the boat was stopped and backed.

Question. How far off was she at that time?

Answer. She could not have been over 600 feet at that time.

Question. Did you see all her lights when you first saw her?

Answer. When I first saw her she came up, boat, lights, and all, right out of the fog.

Question. How soon after the collision did the fog lift up?

Answer. I could not tell exactly; I supposed I was kept down there ten or fifteen minutes, down below, going round there and looking at what damage the boat had sustained. I might have been that time looking round, and when I got up I could see each shore.

Question. When the boat got ashore you could see each shore?

Answer. Yes, sir.

Question. Where was your lookout when the captain came on the pilot-house, this young Glover?

Answer. In the pilot-house.

Question. How long had he been there?

Answer. Ever since we come into the river.

Question. You had two men at the wheel and yourself forward?

Answer. I was in front of the pilot-house. I went on top of the pilot-house when I thought there was any difficulty, any immediate danger, or we were in a close place. I would move from the front of the pilot-house on the hurricane-deck, up on top.

Question. Who sent the lookout to the wheel-house?

Answer. I did.

Question. For what reason?

211 Answer. Because I have always been accustomed to put the lookouts-man there to assist the wheelsman to put the wheel over as occasion would require; of course it is heavy and one man can't handle it quick enough.

Question. What cargo had she and what is her burthen?

Answer. Corn and flour.

Question. How much?

Answer. 15,000 bushels of corn and the remainder flour.

Question. What is her burthen?

Answer. Over 600 tons, 600 and a few; I don't know the exact amount.

Question. Which way does your propeller's wheel work?

Answer. By going ahead or backing?

Question. Going ahead.

Answer. Works to the right; for instance, this was the stern of the vessel, the wheel revolves in this way, and in backing reverses.

Question. In backing which way does it swing your bow?

Answer. For instance, going down the river.

Question. She would slew your bow to the starboard?

Answer. Yes, sir; with her helm amidships.

Question. You said at Hockin's dock you came out into the stream; did you give any order, and if so, what order?

Answer. Of course, in coming down here to Hockin's we are obliged to port a little to clear the bank, and after I got there I had no more to do with the vessel.

Question. You could not have got out into the middle of the river without, because there is a curve?

212 Answer. We had to port, of course, to get out.

Question. State whether you gave that order that was given after the captain came on deck.

Answer. I told the man at the wheel to keep her steadied to the compass; what point of the compass that was I don't know.

Question. Did you look at the compass at that time?

Answer. I didn't; I just merely told him to take the compass for it. I often tell him to take the compass for it, and keep her there; often make those remarks to the wheelsman.

Question. Was there any one with you on deck when you came down from Port Huron until you reached about Hockin's dock, or below there, besides the wheelsman and young Glover?

Answer. Yes, sir; there was a man, a passenger, by the name of Barker. I afterward found out his name to be Barker. I never had any conversation with him.

Question. When did you first see the captain after coming into the river?

Answer. After we left St. Clair, between St. Clair and Hockin's wood-dock; I heard him talking on the dock, but I didn't know whether it was to Barker or some other passenger aboard the boat; but I didn't see him come up and give any orders until we got down to this dock; he came upon the pilot-house there.

Question. About how high is your wheel in the pilot-house above the hurricane-deck?

Answer. It is right on the hurricane-deck.

Question. How high do you stand above it when on the pilot-house?

Answer. About seven or eight feet; somewhere in that neighborhood.

213 Question. Where was your compass on the Mayflower?

Answer. Right forward of the wheel in the pilot-house, so the man steering can look at it—right forward of the wheel; he looks ahead, and when the vessel sheers he can tell by the compass.

Question. Was there any light in the binnacle?

Answer. Yes, sir.

Question. So as to see by the compass?

Answer. Yes, sir.

Question. How is it about seeing into the binnacle, can you see into it through the top of the pilot-house on the propeller?

Answer. Yes, sir; there is a skylight through the top of the pilot-house; you can look down; and when there is a light up above I can look forward into the compass in the box.

Question. In running out there, I understood you to say you didn't run by compass, simply by land—the objects along?

Answer. Marks and objects along the land as we followed the river down along the banks.

Question. How long before the captain came out; was it before or after the wheel was ported—after you came out into the river?

Answer. I had hauled her head off the bank, and had just steadied her as he came along up.

Question. Can you tell how far you ported at that time before you steadied her?

Answer. I can't tell how many points. I merely calculated to haul her off the bank. We were keeping near to the bank.

Question. About how many points?

214 Answer. I would not undertake to state anywhere within two or three points. I don't think I could by the compass.

Question. When the captain came upon the pilot-house was there any order given, or signal to the engine?

Answer. After he had been up there a minute, or it might have been two minutes, it cleared up a little bit, and the remark was made that he would go ahead a little faster and get down to Marine City before it shut in thicker.

Question. You say the remark was made; didn't he give the order?

Answer. I don't recollect giving any order.

Question. Or signal to the engine?

Answer. I think he did ring the engine to go ahead a little stronger.

Question. Now, what was the signal to go ahead a little stronger?

Answer. Four bells rung.

Question. That means all right?

Answer. It means go ahead a little stronger.

Question. What do the four bells mean, or don't they mean when the engine is running, when she is hooked on, does it not mean to go ahead full stroke or full speed?

Answer. In the fog in this kind of way the engine is checked down, and very often his management was, if the engine run a little too fast or slow he would send word to them; but as a general thing, on an engine starting off in thick weather, the engineer would not work her strong until he was satisfied everything was all right; but there was nothing said to the engineer here, or signals given to him, and I don't know how he worked her.

Question. The signal was given stronger?

Answer. Yes, sir.

Question. She hadn't been unhooked since coming into the river—checked down?

215 Answer. She hadn't been unhooked; they often check them down—shut the steam very low.

Question. Was there any other signal given to the engine until the bell was rung to check and stop?

Answer. Not that I know of.

Question. What time did this collision take place?

Answer. It was somewhere in the neighborhood of about 11 o'clock—between 10 and 11 o'clock—somewhere near there.

Question. What is the full speed of the propeller Mayflower?

Answer. Her average running is about nine miles an hour; when she is crowded and not too heavy-loaded, she can make a little more.

Question. How much of the way from the mouth of the river to the collision had there been fog?

Answer. It had been a little hazy all the way down; it had come in streaks.

Question. Sometimes thicker, and sometimes less so?

Answer. I found no difficulty until I got a little below St. Clair.

Question. About what is the current there, off Ricord's dock?

Answer. Somewhere in the neighborhood of three miles.

Question. That is a pretty strong current there, ain't it?

Answer. Three-mile current; that is what I heard it said; never positively knew what the current was; merely judging from what I have seen, I should think there was between a two and three mile current—three and four—between three and four.

Question. Where, in your judgment, did the collision take place as to Ricord's dock—above or below?

216 Answer. I think, as near as I could judge—I can't tell positively, because I didn't see the dock until after it cleared up; then we were some distance below it, and I suppose it took place somewheres—it might have been thirty or forty rods below.

Question. Had you started your propeller when it cleared up so you could see the dock?

Answer. After it had cleared up, then I come up on deck, and he started her ahead. I don't know what she had been doing when I was down below, after the Dove ran ashore—probably five minutes after—and we saw her get ashore; then the captain rung to go ahead down the river.

Question. Loaded as the Mayflower was, coming down the current, and with the speed she was running, how long before her headway could be stopped, in your judgment? How far would she run?

Answer. I don't know; I would not like to swear positively. I might come within a rod of it, and I may not come within half a mile of it. I can't give any idea of it; but we could not have been running full speed at the time of the collision, because she had been checked down the river, and it will take that boat a considerable time to get under full headway.

Question. Running as you think she was, how far would that propeller run before her headway could be stopped after the signal was given to stop and back, down the current, and in that current, with her load of cargo and the headway she had on?

Answer. It might have been sixty or eighty or one hundred rods, and maybe half a mile, for all I know.

Question. Do propellers stop their headway readily anywhere?

Answer. No; they don't. It is a pretty hard thing to stop a heavy boat, loaded, coming down stream.

217 Question. She had a full cargo?

Answer. Yes, sir.

Redirect by Mr. Russell:

Question. You say upon your cross-examination that when you came up from below, as I understood it, the Dove was aground after the collision, and then the Mayflower was started up—her engine was. That is correct, is it?

Answer. I don't think I said when I came up she was aground.

Question. In reference to the question from Mr. Moore, just now. He asked you when the vessel started up. I understood you to say it was started up when you came from below.

Answer. No; after the vessel was aground on shore; after the Dove had got on the Canada shore.

Question. She was started up after the Dove got on the Canada shore?

Answer. Yes, sir.

Question. State about how far, in your judgment, she was then lying from the Dove.

Answer. After she was ashore?

Question. Yes.

Answer. I should think that she was within a quarter of a mile of her, and the Dove was considerably down the 'iver. We were not directly opposite her.

Question. You mean a quarter of a mile in a diagonal direction?

Answer. She might have been a quarter of a mile or a little over. She was down the river a little, on the Canada shore.

Question. State whether, after the conversation between you and Capt. Woodworth in respect to Ricord's dock, which you have testified
218 to in your cross-examination, whether, after that, you saw the Canadian shore, and how soon after that?

Answer. I suppose it was; it might have been a minute or so after the captain first come up on the pilot-house it cleared up so I could see the Canada shore, and so could he; then he rung the four bells to go ahead with the boat.

Question. About a minute after he came up?

Answer. Yes, sir.

Question. Now, whether that was after what he said, according to your testimony, about Ricord's dock?

Answer. The ringing of the bells to go ahead?

Question. That it cleared up.

Answer. It was before it cleared up; it was very thick; he came up on the pilot-house, and, says he, It is as thick as mush; something like that; and a few minutes after that it cleared up so we could see the woods on the Canada shore, as far as, I think, John Bury's dock, (nearly abreast of Ricord's dock;) we could see the shape of the land on the Canada shore.

Question. Was it before or after you and Woodworth had spoken about Ricord's dock?

Answer. Before it cleared up; this conversation took place when it was very thick, so you could not see either shore; if it hadn't been, I am sure the man would not have asked me any questions, because he knows the river as well as I do or any other person.

Question. When it cleared up in the manner you have described, tell about how far you were from the Canada shore when it became visible.

Answer. We might have been three or four times her length from the Canada shore, as near as I could judge.

Question. (By the court.) What was the length of the Mayflower?
219

220 Answer. About 180 feet; I should think near that.

Question. Do you know the location of Gray's dock?

Answer. I don't know the names of the persons owning the docks there.

Question. Do you know the dock opposite Ricord's?

Answer. There is Bury's dock there, and Reynold's, and two or three docks a little above that, close together. I know where Reynold's dock is, and John Bury's, and Ricord's, but the names of those three docks close together I don't know, because I had never stopped there.

Question. When you came up in the manner you have described, and when, according to your judgment, you were three or four lengths of your boat from the Canada shore, state near what dock on the Canada shore you were.

Answer. We must have been very near Reynold's; somewhere abreast of it; not a great ways from it; we might have been a little above or below; I could not see the bank of the river so I could discover positive, but I could see the tops of those trees running round the shape of the

river, but not close down to the water; not anything that I could tell positive; there was no object I could see on shore at that time; neither dock nor houses—houses close to the bank; it would only be half a minute when the wind would blow over the fog; then it would close again.

Question. Upon your cross-examination you spoke in reference to blowing one whistle, which was followed by two whistles; will you describe how the one and two whistles were blown with reference to the time intervening between the one and the two whistles, and explain how it was that they came to be blown?

Answer. The reason why I blew this whistle, I suppose I am responsible; I had no orders from the captain to do it, for the minute
221 before that I had some conversation with the captain. When I first saw this light I spoke to the captain. Says I, That is the Dove over there; she has gone up the American shore; we are rid of her; and blowed one whistle; and went to drop the whistle-string on deck again, and the captain says, Blow two whistles quick; and by the time I had blown two whistles, he had stopped and backed the boat.

Question. State whether the two whistles followed the one instantly, or whether there was an interval.

Answer. I suppose there might have been this much difference, like that, (illustrating by tapping the table thus: . ——— ..) There might have been that much possibly; it was almost instantly, as you would blow three whistles, because I intended to blow one whistle, and looking up I seen the boat off 400 or 500 feet from us, and blowed two more whistles.

Question. Suppose the Dove, lying upon the American side, within her own length of the channel-bank and within five of her lengths below Ricord's dock, headed northeast, with a hole in her port bow eight feet fore and aft and eight feet up and down, state your opinion whether that vessel could have been backed upon the American shore and stranded, or could have been run on stem on on the American shore.

Answer. I can give my opinion?

Question. Yes, sir; illustrate it by model, if you please.

Answer. I think if I had known my boat was within 100 feet of the American shore I should not have undertook to cross the river; I should have got round to it any way I could, knowing she had that hole in her.

Question. Will you illustrate how you could have got her on by
222 model? Suppose the Dove lying in this direction, illustrate in what way you would have got her on the shore?

Answer. Knowing the boat had as big a breach, I would have tried her and got her to run on the shore this way; I should have done it, because a man, knowing she has got a big hole in the bow, he should want that end on the beach instead of getting this end on.

Question. In order to do it what manœuvre would you have taken; tacked, or gone forward, or what?

Answer. I would have tried her both ways; would have tried to go this way, and finding that failed, if I could see the shore, I would have tried this way.

Question. In order to bring her this way how would you put the wheel, to the starboard, in backing generally; when you back an engine, the rudder, being this side, would have a tendency to slew the boat up stream?

Answer. She would have to go ashore; if she had been close enough she would back to the shore.

Question. How would her bows come to shore?

Answer. I should think swing down in that way.

Question. With her wheel hard astarboard her starboard bow would swing on the shore?

Answer. Yes, sir; as soon as her wheel would touch on the bank she would partly go along the bank—so.

Question. What is your opinion as to the safety, under those circumstances, and the good seamanship, of undertaking to run to the Canadian shore?

Answer. In that case I should run to the first shore I seen; I can't be a judge of this matter of other men's minds, or anything about it; I should say I would run to the first shore I seen, either the Canada shore or the American shore, and I believe the Dove did; the first land they saw they run to, whether it was the American shore or not,
223 they didn't know, I am well satisfied, at the time that boat was run ashore, because it was foggy, and at the time the collision occurred we were not 600 feet apart before they seemed to rise right up there out of the water.

Question. State whether the Dove, lying in the position which I have named in my last question but one, the Mayflower lying close by, and offering a line or assistance; state whether, with the assistance of the Mayflower, it would be possible or easy to reach the American shore.

Answer. Yes, sir; I am satisfied if we had taken a line from the Dove we could easy put her on the American shore within a very few minutes, not so long as it would take to get the line to the boat, if we had been close to the American shore; but I could not tell which shore we were on at the time the collision occurred.

Question. You have already testified it took place, as near as you could tell, you were nearer the centre of the river.

Answer. Yes, sir.

Question. That was your testimony, wasn't it?

Answer. Yes, sir.

Question. State in what way it would have been proper, under those circumstances, for the Dove to have taken the line from the Mayflower.

Answer. We could have thrown a heavy line to her at the time the captain holloed to him to run his boat ashore as soon as he could, because she would not last him five minutes; we could have got the line to her very quick—we could see shore; he told our boat he didn't want any line. I went down below after the collision occurred; run down on the forecastle-deck and got a lamp, and went to go down into the
224 forefoot-peak, (the well;) went down to sound the well, and the bottom fell out of my lamp; I then went to my room and got another, and went down below again, and took off the scuttle *off* the hole to go down into the forepeak; I went down there, and was down there I don't know how long, and when I came up on deck again the Dove was passing us. For instance, this is the Dove and this is the Mayflower; now when I come up out of the companion-way, right here, I come up and hung the lamp up on the forecastle-deck, and come up on deck, the Dove was apparently right there; come right along and raked us there; I put my hand on the paddle-box when she was running by, just in that shape; we had hit the Dove here, in this way, and swung alongside, in this way, pretty well across the river, and we must, of course, have passed down in that kind of way and lain still; the boat must have come right along past here, I suppose, because when I came up on deck the Dove was about like that, passing us; I put my hand on the boat as she was passing by to shove her off; I was standing right on the bows of the Mayflower.

Question. How far from the stem?

Answer. About ten or fifteen feet; I was standing right on the bluff of her bow, and she went right along past in that kind of way, and went on the shore in that shape; we were about like that, may be not quite so much as that, when the Dove ran ashore; that was the condition as near as I can place it, and after she went on shore we could see the lights; she swung round; then we passed down and went to Marine City.

Question. State your opinion, or whether you know that in the interim between the collision and when you started down for Marine City your boat was lying still—in the time elapsing between the instant of collision and the time you started, as you just now said, to come
225 down to Marine City, after they had grounded, whether your boat was under way.

Answer. After the boat passed me I don't supppose it was ten seconds before she was ashore, and we looked at her and saw she was ashore, and there was no more danger of any lives being lost, then we started on down to Marine City. I felt very anxious about the boat, for I seen such a hole in her bow; I knew I would be responsible for the action as well as anybody else, and after she was run ashore I was satisfied there would be no more lives lost, and then I felt easy over the matter.

Question. State whether, when the Dove passed you so you put your hand on her, it would have been an easy matter to have lashed the vessels together?

Answer. The Dove was going with pretty good speed, but if they had stopped they could have been very easily lashed together, but they were then running ashore as hard as they could. The captain of the Dove sung out to get out of the way; I heard him when I was coming up the steps; then she was coming up very rapidly, running for shore.

Recross-examination by Mr. Moore:

Question. You say at the time you had this conversation with the captain it had lighted up some?

Answer. After I had the conversation with the captain it lit up some.

Question. And then was when you could see the American shore or Canadian shore?

Answer. The Canadian shore.

Question. Could you not see the American shore, too?

Answer. No, sir.

Question. Did you look?

226 Answer. I suppose I did; I would be as likely to look on shore as the other.

Question. Do you recollect looking on that shore?

Answer. I don't see why I would not; I think I did; it would be a natural consequence.

Question. Do you recollect looking towards the American shore at that time?

Answer. I think I did.

Question. If it had lit up you could see across the river—if it had lit up so there was no fog to intercept your view?

Answer. If you had passed up and down the river as much as I have, and seen the fog work, you could tell just about as well as I could.

Question. You say this conversation took place near Reynold's dock?

Answer. After we had passed those three docks.

Question. How far was that down to Bury's dock—John Bury's, not Thomas Bury's?

Answer. It must have been in the neighborhood of two miles.

Question. And still you could see along the shore to Bury's dock?

Answer. I could see a clump of trees.

Question. For nearly two miles?

Answer. For nearly two miles I could see the trees, and it just happened to clear up there so you could see—a streak of fog.

Question. If you could have seen down there for nearly two miles, could you not have seen across the river if you were in the middle of the river?

Answer. I could if it had been a clear streak.

Question. Did it shut in any more very soon after this conversation?

227 Answer. Yes, sir; it would raise up a little bit and drop down again.

Question. It shut down then and continued shut down until you had the collision?

Answer. No; it was clear a little while and then shut down again.

Question. How many times did it light up and shut down again between that time and the collision, or did it continue along thick at the time you saw Bury's dock and the Canada shore?

Answer. It continued thick all the time, but not so very thick but what I thought we could see; I had the idea, I am only speaking from my own experience, when the captain rung the bells to go ahead I could see, as I supposed, a clump of the land round the Canada shore, because there the woods come down to the dock.

Question. For nearly two miles?

Answer. I suppose a mile or a mile and a half or two miles.

Question. Now, you said, in answer to one of Mr. Russell's questions, that you watched that boat until she got ashore; you felt responsible somewhat if lives were lost. Why would you feel responsible?

Answer. For, first, this reason why I made that remark was because I am a licensed pilot. It is supposed I am under obligations to do all I can to save the lives of passengers. That is why I speak, not anyways in the management of the vessel, but my obligations, holding a license under the Government, to do all I could to save the lives of passengers. That is where I speak that I am responsible.

Question. Now, mate, answer me this question. Do you call it good seamanship in running in a fog that is variable and lights up a little, and the engine had been signaled to go ahead, and then it shut down

228 again, to go ahead without checking, knowing a steamer was coming up and passing you?

Answer. I don't know how to answer that question. If I could see enough ahead to consider myself safe I should run her; if I didn't I should not. That would be my judgment about it.

Question. Would you not, as a matter of fact, when the fog shut down have checked your vessel again if you had been in command?

Answer. If I was sailing a vessel and had the responsibility on myself I don't know how I should have acted in this case; but if I could not see anything ahead, and thought there was danger, of course I should check the boat. I hate to be questioned about this thing, because I don't know how the thing was. I might have seen and I might not; because I don't know anything about the thing, and hadn't ought to be mixed up in the thing. I know if I had been acting myself I would know all what to do. I can't tell the mind of the master of that boat.

Question. Do you know that it is bad seamanship to run without checking in a fog where you are meeting vessels?

Answer. In this case I consider——

Question. Do you not know it is bad seamanship to run under full headway where you are meeting vessels in a fog?

Answer. I know that it lays us liable for doing it.

Question. Now, why did you blow that one whistle?

Answer. For the simple reason that I had seen the boat off so far on the starboard bow that I supposed we were perfectly clear of her, and she had understood our signals, and was passing by on the American shore. I tell just as I felt about it, and just as I talked about it. I blowed it to signal anything that was coming below us, supposing
229 ourselves entirely clear of that boat, because she was so far off, and we were heading directly down stream.

Question. And to signal any other vessel that was coming?

Answer. Yes, sir; below us.

Question. Would you have blown that one whistle had you supposed you were on the Canada shore?

Answer. Yes, sir; I should if I had been anywhere. I should have blown that one signal to warn anything coming up, one side or the other, and she would have told me, as I suppose according to law, which side of the river she was on; she would answer me again, and I her again; if she would answer two I would answer two—the ascending boat we have to answer as they require. The intention was, gentlemen, when I blowed this one whistle, I had a conversation with the captain; says I, that is the Dove going up on the other side of the river; I guess she is going to stop at Ricord's. On my own responsibility I blowed the whistle, and was just going to drop the whistle; says he, blow two whistles quick; I looked and the boat was within five or six hundred feet of us; the whistles were so close together you could hardly distinguish them from being three whistles.

Question. One whistle signifies you are passing a vessel on the port hand; two whistles on your starboard hand?

Answer. Yes, sir.

Question. Until you came down to Bowen's dock you had blown two whistles, had you not?

Answer. I had blown one whistle and two whistles; I had passed two tows coming down the river; occasionally shortly after we came into St. Clair River, but it hadn't shut in thick. I hadn't blowed any until I got below St. Clair, except those that blowed for me to pass one
230 side or the other, but I didn't blow any whistles for fog at all until just at the point at St. Clair, then it got thick and I couldn't see I suppose more than half a mile ahead.

Question. What whistles did you blow after the collision in going down?

Answer. I can't tell positive after that, because I went down below again. The captain sent me, after we started ahead, to see how things were, and by the time I came up on deck we were down nearly abreast of Marine City. I went to work to get my lines ready.

Question. You didn't notice?

Answer. I didn't notice whether there was any; I can't recollect now, there might have been whistles blown.

WM. MORRIS sworn for the Mayflower.

Examined by Mr. Russell:

Question. You live in Detroit?

Answer. Yes, sir.

Question. What is your business?
Answer. Ship-carpenter.
Question. For how long?
Answer. About twenty years.
Question. Where are you now employed?
Answer. At Clark's dry dock.
Question. State whether you assisted in repairing the Dove and Mayflower?
Answer. I was supposed to be foreman at the time.
Question. Were you foreman at the time they were both repaired?
Answer. Yes, sir.
Question. Will you describe, if you please, the hole in the Dove?
Answer. The size of the hole?

231 Question. Yes, sir; the main point I want to get at is, I shall ask you next question, at what angle the vessels must have come together, judging from the hole; with reference to that mainly I wish you to describe the hole.

Answer. I should judge the hole was about eight or ten feet in length fore and aft, and the whole size of the hole, up and down it, would be about eight feet, I should judge—seven or eight feet. It wasn't very deep; it might not have been over six feet from her main deck down.
Question. About how far was she smashed in; how deep?
Answer. Also seven or eight feet up and down.
Question. I mean towards the center of the vessel?
Answer. There was not much of her right there; it was right at the stem.
Question. Describe how deep a cavity there was in the hull; you say there was nothing there to smash, but describe the cavity into which the hull penetrated.
Answer. I suppose it was from the ends of the plank that were broken; it may have been about five or six feet and seven feet across.
Question. Is that where the ends of the plank were broken, from the ends of the plank on the port side, then across?
Answer. Of course all these planks were broken off, and her bows were slewed right around.
Question. State whether her keel was started?
Answer. It was.
Question. About how much?
Answer. The plank on the port side was off six or eight inches, and I should judge about twenty feet back from her bows, and the keel was started; so we had to put a piece of keel in her twenty or twenty-six feet long—maybe twenty-eight feet.

232 Question. State whether you formed any opinion, from the appearance of the hole, as to the angle at which the vessel must have collided, and if so, what that opinion was, illustrated by the models?

Answer. They must have been about in that shape, and of course they must have struck about there, I should judge. If they had been more up and down they would have been apt to go by on that side; but as they could not, if the Dove had been a little further astern the Doue would have struck the Mayflower; there would not be any question about it; (as it was, the Dove was ahead, the least little bit ahead,) she would have struck there.
Question. How many points is that; can you describe; what is your judgment as to that angle?
Answer. I can't say. (A, B, and C on the Government chart.)

Question. State you opinion as to whether the Dove, with that hole in her, could run three-quarters of a mile without sinking.

Answer. I should judge she could just about go that length with a good head of steam on, and so headed the right shape by starting up, and not turning round, I think they could have about went that distance.

Question. State whether, in your opinion, it would be attended with danger; whether an attempt to run three-quarters of a mile would be attended with danger?

Answer. Of course there would be danger, more or less, understanding the condition the bows were in, to attempt to run, and of course you could not steer the boat by the wheel; but if she was headed for the Canada shore that would be the way to run.

Question. Whereabouts was the bulk-head in her; what would prevent her from filling and sinking at once?

233 Answer. There was a bulk-head, I think it was a double bulk-head, if I am not mistaken, which there could not be a great deal of water pass through; the water that came in came through a space of may be four or five inches, where the water went through aft of this bulk-head.

Question. State whether the keel and timbers were started in the rear of the bulk-head so that the water penetrated behind it.

Answer. Yes, sir; it was.

Question. State, where the bulk-head was attached to the boat on the port side, whether it was started off, whether there was any space between the bulk-head and the side of the boat.

Answer. I can't say to that; I did'nt see; I don't think there was; if it had it was very little.

Question. How large a space was there in the rear of the bulk-head to admit the passage of the water?

Answer. I should judge there was from four to five inches just at the bulk-head—may be not so much—and run to nothing may be ten feet aft of that.

Question. Would a vessel sink if the whole space in front of the bulk-head was filled with water?

Answer. I have no doubt but it would in time.

Question. About how far aft the stem did the hole commence?

Answer. It was about three feet I should judge, that is down about light water mark.

Question. Was there any bruising or rubbing between the hole and the stem—the point of the stem?

Answer. Yes, sir.

Question. Describe, if you please, the appearance of the Mayflower's bow.

234 Answer. Her stem was knocked off up to the ends of the plank—about out to her 11 or 12 foot mark—we will say from 9 feet to 14 feet, there was four or five plank on her starboard bow broken so we had to take them out and put new planks in.

Question. State whether the bow was knocked round.

Answer. It was knocked round so I had to put in two screws on one side and one on the other, in order to straighten up the bows; we put on a new stem.

Question. State whether since you were subpœn'ed in this case any person representing the other side has talked to you and endeavored to influence your opinions, showed you any models or conversed with you on the subject.

Answer. I have not talked with anybody on this subject; there was a little talk at the dock at the time, but I didn't take any notice; I didn't have any idea that I would be called.

Question. Since court yesterday morning?

Answer. No, sir.

Question. Has Yerkis, the son-in-law of Gardner, talked to you about it?

Answer. No, sir.

Question. Captain Nicholson, who was sworn yesterday?

Answer. He merely showed me his idea of how he thought they had come together, when I went up there to assist in getting her up.

Question. He took the pains to come to you, didn't he and talk about it?

Answer. I don't think he did; I went up there on my own accord—I didn't know he was out there.

Question. Did he come to you or you go to him?

235 Answer. I should judge I went to him, but I didn't go with the intention of this case at all; didn't want to get information from anybody.

Question. He volunteered it, didn't he?

Answer. He didn't try to show me anything to give me any information, because I don't think he could.

Question. Didn't he attempt to give you information?

Answer. No, sir.

Cross-examined by Mr. Moore:

Question. Who came to you first about coming here as a witness?

Answer. Captain Woodworth.

Question. Has anybody been to see you to ask you to come as a witness; anybody representing the Dove?

Answer. Not any one.

Question. Anybody approached you or talked to you on that subject at all?

Answer. No, sir.

Question. No one but Woodworth?

Answer. That is the only man I saw.

Question (by Mr. Newberry.) I will ask you this question: Look at this shingle marked "Schedule A"—is that a decent, fair, representation of the bow of the Dove, the black mark representing the hull?

Answer. Yes, sir; that would do very well; I should judge that is about as nigh as you could come to it; I think her bow was fully as sharp as that, if not a little more so.

It is admitted by counsel for the Dove that Mr. Gallagher is a stockholder, Captain Gardner is a stockholder, Captain E. Ward is a

236 stockholder, Mr. Newberry is a stockholder, that Mr. Yerkish is a stockholder. Also, that Mr. Yerkish is a relative of Captain Gardner—a son-in-law.

Admitted that Captain Gardner is president of the corporation and has the general management of the corporation.

T. J. DANIEL,
Stenographer.

237 At a session of the district court of the United States for the eastern district of Michigan, begun and held at the district-court room in the city of Detroit, on Tuesday, the seventh day of March, in

the year of our Lord one thousand eight hundred and seventy-one. Present, the honorable John N. Longyear, district judge.

THE RIVER AND LAKE SHORE STEAMBOAT Line
vs.
THE PROPELLER MAYFLOWER, HER ENGINES, &c.
On libel for collision. In admiralty.

This cause having been heretofore tried by the court, and the court having taken time to consider of its decree therein, and having maturely weighed the pleadings and proofs and the arguments of counsel submitted therein, and due deliberation being had, it is now by the court ordered, adjudged, and decreed that said libellant do recover of and from the said propeller Mayflower, and from her claimant, H. Norton Strong, the damages sustained on occasion of the running into and sinking of the steamer Dove by said propeller in St. Clair River on May 31, 1869, the amount of said damages to be hereafter ascertained and determined. And for the purpose of ascertaining and determining the amount of said damages, it is now ordered that it be referred to Darius I. Davison, a U. S.
238 commissioner in and for the eastern district of Michigan, to take proofs relating to and to ascertain the amount of said damages, and to report the same to this court with all convenient speed.

239 In the U. S. district court for the eastern dist. of Michigan.—In admiralty.

IN THE CASE OF THE RIVER AND LAKE SHORE Steamboat Line, owners steam'r Dove.
vs.
THE PROP. MAYFLOWER, HER BOATS, &C.

To the Hon. John N. Longyear, judge of said court:

The undersigned, a commissioner of said court, to whom it was referred by a decree of said court made and entered in said cause on 1871, to examine into the libellants' claim for damages in said cause, to take such testimony as might be offered by either party in relation thereto, and to report to the court the amount proved and ascertained to be due said libellant by reason of the damages sustained by said steam'r Dove on occasion of her having been run into and collided with by said prop. Mayflower, having weighed and considered the evidence taken by said parties, (which evidence is filed herewith,) and having heard and considered the arguments submitted by counsel for said parties respectively, doth now respectfully report, that he hath ascertained and doth now report to be due said libellants from said propeller, for damages sustained by said collision, the following sums, and for the causes following, viz:

Vouch'r	A—General average expenses, less value of services of steam'r 8th Ohio	3,422 48
	" —Add deduction of ⅓d, new for old	132 33
	" —Value of services of steam'r 8th Ohio 11 days, at $100	1,100 00
	B—John B. Clark's bill	2,572 95
	C— do. additional bill	25 00
	D—D. A. Ross & Co.'s bill for lumber	120 29
	F—W. M. Dwights & Co.'s bill of hard lumber	4 25

	G—Detroit Stove-Works' bill stoves		84 50
	H—John L. Ayres' " materials		7 40
	I—D. Lester's " lumber & labor		26 00
	Carried over	7,495	60
240	Vouch'r— Brought over	$7,495	60
	J—John Quigley, plumbing, &c	28	10
	K—John Boydell, paint, &c	187	84
	L, M, N—Painters' time, 1st vouch'r $56.25, 2d do. $40.37, 3 do. 37.30	133	92
	" —David Dickson's bill for glass	8	35
	P, Q, R—Carpenters' time, 1st vouch'r, $46.24, 2d do. $82.53, 3d do. 78.75	207	52
	S—Bushanan's board-bill	57	00
	T—Carpenters' bill	31	80
	V—Henry Campbell's bill for labor	4	00
	U—Joseph Grout, board of crew	10	00
	W—Buchanan's additional board-bill	4	55
	X—Alex'r Ball, work at dry-dock	12	75
	Y—John Willis, do. " "	5	43
	Baer—Paid for team to go for tug	5	00
	" —Carrying sheaves to dry-dock	3	00
	C 2—Use of sail	17	00
	Baer—Washing-bill, Mrs. McWilliams	17	38
	D—Q. Smith, lumber furnished at place of collision	29	04
	McCollum—Difference against boat between new & old steam, wood or iron	80	00
	Sloan—Damages to cornices, head-lines, & frescoes.	300	00
	do. —Bedding & furniture, crockery, &c	250	00
	do. —Damages to lines, $200; damages to carpets, $50	250	00
	Baer—Damurrage, 28 days, at $100 per day	2,800	00
	do. —28 days' wages of officers and crew, at $22.50.	630	00
	Total	12,568	28
	Interest on above from date of adjustion, July 30th, '59, to date of this report, Feb. 5th, '72, 2 years, 6 months, & 6 days, 7 %	2,200	00
	Carried forward	$14,768	28
241	Brought forward	$14,768	28

Items of damage to cargo:

H. C. Hayes & Co	25	50
L. S. King	5	00
H. McMarren & Co	20	00
G. M. Gowen	2	75
Moss & Mills	8	40
Do. do. on crockery and cheese	30	03
J. C. Sherman, fish	5	00
Wm. Van Camp, dry goods	31	85
L. Wallace, trunks	14	00
H. Whiting, merchandize	147	53
H. Wilcox, tobacco	16	45

Wm. Snow, wire	5 00	
A. Bedford, plaster	3 60	
Freight lost, as per adjustment	74 63	
Merchandize lost, viz:		
John Coleman, lager-beer	37 50	
B. R. Bell, tobacco & cigars	73 18	
G. Stearns, do. do	43 85	
Moss & Mills	35 86	
Horace Williams	40 10	
Total	620 23	
Interest on above from collision, May 31st, '69, to report, Feb. 5th, '72, 2 years, 8 months, 5 days, 7 %.	115 83	
		736 06

Total amount of damages & interest $15,504 34

fifteen thousand five hundred and four dollars and thirty-four cents.

I have rejected and disallowed from the amounts claimed by counsel for steam. Dove the following items:

242	Campbell & Owen's bill, voucher Q, for lining of engine after she had left dry-dock, or made two trips.	$66 30
	Joseph Nicholson's bill for staying in Detroit to see to survey, or bills of boat, being paid to induce him to give up trip to Philad'a	100 00
	2 days' wages of crew, while repairing, at $22.50; 1 month charged and but 28 days allowed	45 00
	Excess disallowed in am't claimed for services of 8th Ohio. (11 days claimed, at $140 = $1,540; 11 days allowed, at $100 = $1,100;) difference	440 00
	Total amount of disallowance by commissioner	$651 30

The undersigned has filed with and made part of this report, 1st, the depositions taken on behalf of the libellants; 2nd, the exhibits filed by libellant; 3d, the depositions taken on behalf of the respondent; 4th, the stipulation between counsel for both parties relative to this report, and, 5th, the memorandum of libellants' proctor of sums claimed by libellants.

All of which is respectfully submitted.

WM. D. WILKINS,
U. S. Comm. East. Dist. Michigan.

DETROIT, *Feb'y* 5th, 1872.

Filed February 12, 1872.

D. J. DAVISON,
Clerk.

243 District court of the United States for the eastern district of Michigan.

RIVER AND LAKE SHORE STEAMBOAT LINE
vs.
PROPELLER MAYFLOWER. } Admiralty.

It is hereby stipulated that upon the assessment of damages in this case, the adjustment of general expenses of steam'r Dove, made by

James J. Clark, July 30th, 1869, shall be admitted as prima-facie evidence—

(1.) By the amounts paid the parties therein named for services in raising the Dove, and of the value of such services, except that it shall not be considered as any evidence of the value of the services of the steamer Eighth Ohio.

(2.) Of the damage done to such portions of the cargo as are therein specified as damaged, and of the amount of such loss or damages.

It is further stipulated that proof of money expended for repairs shall be prima-facie evidence that such repairs were necessary and the amount paid reasonable.

It is further stipulated that proof that merchandize was shipped
244 on the Dove on the day of the collision, and claim made for the loss of the same, shall be prima-facie evidence that the same was lost in consequence of the collision, and of the amount of such loss.

F. H. CANFIELD,
Proctor for Respondent.

Filed Feb. 5th, 1872.

WM. D. WILKINS,
U. S. Commr.

Filed Feb. 12th, 1872.

D. J. DAVISON,
Clerk.

245 In the district court of the United States for the eastern district of Michigan, in admiralty.

Before Wm. D. Wilkins, a commissioner of said court, on June 23d, 1871.

IN THE CASE OF THE RIVER AND LAKE SHORE Steamboat Line, Owners Steam'r Dove,
vs.
THE PROP. MAYFLOWER, HER ENGINES, BOATS, &c.

Depositions taken under order of reference made by said court in said case, referring it to said comm'r to ascertain, compute, and report damages in said case, taken at Detroit, Mich'n, before said comm'r, in presence of F. C. Canfield, esqr., proctor for said prop. Mayflower, and of H. B. Brown, esqr., proctor for said River & Lake Shore Line, &c., said proctors respectively agreeing and stipulating that said depositions might be taken, read, & used as evidence on said reference; & waiving all objection thereto as to regularity or formality, & saving & reserving all objections as to relevancy or competency.

On behalf of the said steam'r Dove.

And the said JOHN D. BAER, being duly cautioned & sworn in the above matter to testify the truth, the whole truth, and nothing but the truth, did thereupon depose & say as follows:

The paper marked "A" is the adjustment of the Detroit Fire Marine Insurance Co., of general average of expenses incurred in raising the Dove and getting her into dry-dock at Detroit. The total amount of expenditure shown by this exhibit is $4,952.48. Add to that a deduction made in the adjustment of one-third new for old, $132.33. The underwriters and
246 parties interested paid according to this adjustment. There has

been a settlement among the parties interested according to this adjustment. The expenses according to this adjustment were paid to the parties named therein. The charges were reasonable. They were made by Capt. Nicholson.

(Paper marked "B" shown to witness.) This is the bill of John P. Clark, for repairs; amount, $2,572.95; certified by D. McCullom, who is & was our foreman in the joiner & carpenter department; it is his business to look after the repairs and certify to the bills.

(Received subject to objetion.)

Paper marked "C" is an additional bill of John P. Clark's. Of this only $25 is chargeable to the Dove. The last item is for work done on another vessel.

Paper marked "D" is the bill of D. A. Ross & Co., for lumber. Of this the amt. chargeable to the Dove is $120.29. It was for lumber furnished the Dove in her repairs.

(Paper marked "E" shown.) This is Campbell & Owen's bill, amounting to $66.30, and is for service connected with the repairing of the Dove. Capt. J. A. Sloam was the Dove's master. I paid this bill for the River & Lake Shore Line. I presume it is reasonable, or it would not have been certified to.

(Paper marked "F" shown.) This is a bill of W. M. Dwight & Co., for $4.65, for hard-wood lumber; $4.65 for lumber furnished the Dove for repairs.

(Paper marked "G" shown.) This is bill of Detroit Stove Works, $84.50, and was for stoves furnished the Dove.

247 (Paper marked "H" shown.) This is bill of John S. Ayers for materials used in wrecking, not included in the adjustment; it is for $7.40.

(Paper marked "I" shown.) Is bill of D. Lester for lumber and labor, $26.

(Paper marked "J" shown.) Is bill of John Quigley, $28.10, for repairing, steam-fitting, plumbing, & tinkering.

(Paper marked "K" shown.) Is bill of John Boydell for paint, $137.84.

(Paper marked "L" shown.) Is for painter's time, 1st voucher, $56.25.

(Paper marked "M" shown.) Is for painting, 2d voucher, $40.57.

(Paper marked "N" shown.) Is for painting, 3d voucher, $37.30.

(Do. "O" ") Is David Dixon's bill for glass, $8.35.

(" "P" ") Is 1st carpenter's bill, $46.24.

(" "Q" ") Is 2nd " " $82.53.

(Do. "R" ") Is carpenter's board-bill, $78.75.

(Do. "S" ") Is board for carpenter & men while the boat was in dry-dock, $57.00.

(Do. "T" ") Is a carpenter's bill for labor on Dove while in dry-dock, $31.80.

(Do. "U" ") Is bill of Joseph Grant for board of the crew, $10.00.

(Do. "V" ") Is bill of Henry Campbell for helping theengineer, he is a pronckabout, $4.00.

(Do. "W" ") Is Buchanan's additional board-bill of men, $4.55.

(Do. "X" ") Is bill of Alex. Bell for working at the dry-dock, $12.75.

(Do. "Y" ") Is bill of John Willis for working
248 on Dove in dry-dock, $5.48.
(Do. "Z" ") are bills for losses & damages to cargo as follows, all marked "Z," respectively:

Bills for damages, H. C. Hope & Co, $25.50.
Do. L. S. King, damage to flour, 5.00.
Do. H. McMoran, do. 20.00.
Do. G. McGowan, damage to tobacco, 2.75.
Do. Moss & Mills, 8.40.
Do. Do. additional claim, 30.03.
Do. J. C. Schuman damage to fish, 5.00.
Do. Wm. Van Camp, damage to dry goods, 31.85.
Do. L. Wallace, damage to trunks, 14.00.
" H. Whiting, damage to merchandize, 147.53.
" H. Wilcox, damage to tobacco, $16.45.

These claims all appear in the adjustment except the $30.03 of Moss & Mills, which was brought in afterwards. I know nothing further about their correctness, except those which I have paid. We have promised to pay the others, but have not paid them. All these have been presented to me by the parties who had the bills of lading.

Examination adjourned by consent until July 19, 1871, at 2 p. m.

On Wednesday, July 19, two p. m., at said office, proctors for both parties being present or the examination of John D. Baer, continued, who further testified and said:

The $5 charged for team to go for tug was paid to McCollum
249 for going to St. Clair to get a tug to come down and assist the boat. I paid him 1 gd. collar the bill myself, $5.00. The tug was employed to assist the Dove, as I understood. I was not there, but I paid him that sum for that service.

Wm. Snow's bill of $5, for damage to wire, I paid as it stands marked, "A 2."

The bill for shears & draying, $3, was for carrying shears to the dry-dock while the vessel was there. I paid it myself as marked, "B 2." (No voucher filed.)

The charge of thirty-nine $\frac{50}{100}$ dollars for use of sail, I paid; I have a voucher for seventeen dollars of that amount and the balance is in the adjustment, $17.00, marked C.

The charge of seventeen $\frac{38}{100}$ dollars for washing clothes is for bedding, curtains, and linen washed by Mrs. McWilliams, and for scrubbing the woodwork inside, being ($10.00,) $17.38.

The charge for money paid E. Smith, twenty-nine $\frac{14}{100}$ dollars is for lumber and services furnished the Dove up at the place of collision; used for wrecking purposes; that is his bill, & I paid it to him, $29.04.

The seventy-five dollars for damages on cornices, I know nothing of.

Question. What were the net earnings of the steamer Dove for the month preceding the collision and the month following her repairs?

(Taken subject to objection as incompetent.)

250 Ans. She made sixteen trips in May, at an average of $282.28, and at thirty trips a month that would amount to $7,568.28; her gross expenses for May were $2,769.79, balance being net earnings in May $4,798.49; for July her gross earnings were $6,167.70, her expenses for same period were $3,179.82, balance being nett earnings for July $2,987.88. She failed to make her full number of trips in May. She should have made thirty trips and did make only sixteen.

Question. How did her nett earnings for May & July compare with her average earnings during that season?

(Objected to for same reason.)

Answer. They would average about the same; August & September would not be as much May & July; but November & October would bring it up to about an average.

Question. What was the value of the use of a steamer of the character and capacity of the Dove during the season of 1859; and at what sum could such a steamer have been chartered for per day, the charterer paying expenses; that is, what sum nett? I mean what was her use worth to you in the line in which she was then running?

(Objected to as incompetent & irrelevant.)

Answer. It makes a difference whether a steamer is to be chartered for a season or taken out of a line for a month only. I suppose to
251 charter the Dove for the season 1869, that she was worth one hundred dollars a day, ($100.) If she had been mine, to have taken her out of her line & have it break up, I would not have been willing to do it for three hundred dollars a day.

Quest. What could a boat of the character and capacity of the Dove have been chartered for per day to supply her place while she was being got up & repaired; that is, supposing there were such boats here, the person chartering paying expenses?

(Taken subject to objections.)

Answer. Gross, $225; nett, $110 or $115. I think there were thirty-one days lost in getting her up and in making her repairs.

Cross-examination reserved by consent.

Recalled:

Quest. Were & are you acquainted with the value and use of steamboats in 1869?

(Taken subject to objection of Mayflower's proct.)

Answer. Yes; in our own routes I am & was. Outside of that I have no knowledge of steamboats were worth to other parties, unless I knew the value of their routes.

Baer's examination on July 20th, at 11 a. m.

(To Mayflower's proctor on cross-examination:) I have the Dove's trip book, the report of the passengers, earnings, and expenses taken from her trip-sheets, here present; it embraces 1869; this book. The clerk kept a set of books on board from which the trip-reports
252 were made to me, of which trip-reports this book is a copy. In my testimony yesterday in regard to the earnings of the Dove my evidence is based upon the entries in this book. All of the exhibits that I have sworn to as paid have been paid. I took vouchers for all I have paid, except the $100 paid Nicholson & a sum for scrubbing. The $100 paid Nicholson was charged to the Dove in her account. I have no voucher except the adjustment in regard to the sum paid for the charter of the Eighth Ohio. I paid this sum myself. We chartered the Dove for a few days, a day at a time, in the season of 1869. It occurs to me it was in August we chartered her to go to Toledo. I base my opinion as to the worth of her line upon her daily earnings and those of the which alternated with her on her route, deducting therefrom the proportion of her monthly expenses. I base my opinions upon her earnings on the route on which she had been running & the earnings of her alternating boat, prior to and subsequent to the collision in season of '69. I know of the chartering of a boat in 1869 at Detroit,

owned by our line, to Eben Ward for $2,000 in March, he paying the expenses. He employed her in the Lake Superior route, I think in carrying ore; she was absent from here while he employed her somewhere up in the iron regions. That is the only instance of charters I
253 know of, except for single day-charters. I still have the original trip-sheets which I have refer'ed to as furnished to me by the clerk of the Dove, & will if required produce them.

(Further examination of witness continued by consent.)

John D. Baer recalled on July 21st and further examined:

(To Dove's proctor:) Am'ts not included in adjustment. Exhibit D 2 is bill of purchase from Babillon, Hinchman & Co. by A. Bedford, 2 bbls. plaster, $3.60. I now give cases or partial cases which I have not settled for with consignees. H. C. Hope & Co., $25.50; of this we have paid $15.54 in the adjustment; H. McMoran, $20.00; of which $10.36 has been paid through the adjustment; Moss & Mills' total losses $30; the insurance company have assessed us on the whole purchase, $39.71; J. L. Shuman, bill purchase $120, damages $5, the assessment by insurance comp'y, $14.39; William Van Camp, damages $31.85, adjustment $4.15; H. Williams, damages $21, do. $2.46; L. Wallace, do. $14, do. $8.42; H. Wilcox, do. $16.45, do. .98.

(To Mayflower's proctor:) I have now enumerated all the goods which were partially lost, for which I have not settled, as far as I can tell.
254 In my best judgement the rate of insurance from the first day of June to the 1st day of July, 1869, would be from 6 to 8 per cent. In my estimate yesterday of the expenses of the Dove during the time she was laid up in 1869 the insurance was included in expenses. I did not for the months of June & July estimate what it would cost to insure her, but in estimating what she would be worth a day I did include the insurance, taking the whole season. Think the Dove got out of dry dock about June 28 or 29, but am not positive. In reference to book I find she got out on June 28th. Proof of loss was made to the insurance company under the policy 'pended. It is in file in office at insurance company and can be produced if desired. The vessels collided on May 31st. The Dove resumed her trips on June 28th.

Quest. How do the dates of the items charged in the bill which have been offered as exhibits compare with the times when the articles supplied were furnished?

Answ. The dates when the articles were supplied correspond. The dates of the payments made are different.

Quest. Then if the dates of the items of any of these bills is subsequent to the times when the Dove resumed her trips, the presumption is that they were furnished after that time?
255 Ans. Except for each work as was uncompleted at the time she resumed trips.

Question. Can you point out from bills the items of any work commenced before but completed after she resumed her trips?

Ans. No, sir; because I have no knowledge of it. There are men who can. I cannot say from my own knowledge that any portion of it was commenced previous to but completed after the Dove resumed her trips.

Quest. Of the bill marked "Exhibit I" only $15 is included in the adjustment; why was not the whole included?

Ans. I do not know.

Quest. What was said by Lester at the time the bill was exhibited & paid, and when was it paid?

Ans. It was paid Sept. 9. Lester remarked when I paid him the money that if the clerk of the Dove had not charged him his fare he would not have brought in his bill.

JOHN D. BAER.

Sworn & subscribed before me on July 21st, 1871.

WM. D. WILKINS,
U. S. Comm. East. Dist. Mich.

JOHN D. BAER recalled by consent.

Quest. (by Mr. Canfield.) The Dove made her first trip after the collision on the 28th of June, did she not?

Ans. Yes; and made trips on the two succeeding days 29th & 30th.

256 During the ensuing month of July the Dove gave what we called excursions, but was never taken from off her regular route for that purpose in the month of July. We took what we called excursion-trips from Port Huron down at reduced rates, but she was not taken off her regular route. She may have made an excursion trip to Toledo in that month on a Sunday

The paper now shown me exhibits the gross earnings of the steamer Dove on such trips during the months of May and July.

Paper annexed and marked "X."

JOHN D. BAER.

Sworn & subscribed before me Feb. 1st, 1872.

WM. D. WILKINS,
U. S. Comm. East. Dist. Mich.

257 And the said LYMAN A. JERKES, being about 33 years old, and having been by me first carefully examined and cautioned & duly sworn to testify the truth, the whole truth, and nothing but the truth in the above matter of reference, did depose & say as follows, viz:

Am acquainted with the River and Lake Shore Steamboat Line. I am acquainted with the value of steamers and their use at the *the* port of Detroit, and was in the year 1869, as I was in the business then, or have been for five years.

(Taken subject to objection.)

Quest. What sum per day during the year 1869 could the Dove have been chartered for, the charterer paying expenses?

(Taken subject to objection.)

Ans. Running on the route on which she was then I should say $110 a day.

(Cross-examination of Mr. Jerkes resumed by Mayflower's proctor.)

L. A. JERKES.

Subscribed and sworn to before me this 10th day of January, A. D. 1872.

LEVI L. BARBOUR,
Notary Public, Wayne County, Mich.

258 And the said DUNCAN MCCULLOM, being about 45 years old, & having been by me first carefully examined & cautioned & duly sworn to testify the truth, the whole truth, and nothing but the truth in the above matter of reference, did depose and say as follows, to wit:

I am a ship-carpenter. Have been in such business since I was 18 years old. I know that the iron stem which had been on the steamer

Dove at the time of collision was all knocked to pieces by the blow, & it was going to cost more than it was worth to put it on again. It was taken off and was not fit to be used, and was not used again. I suppose it did not cost less than from $80 to $100; maybe more. It would cost over $100 to put such a piece on again to-day.

Cross-examined:

The iron was knocked to one side in collision and was taken off in Clark's dry-dock. A wooden stem was put on in place of it. They did not put on an iron one again. I was there when the bow was repaired, but was working at other work myself. I base my estimate as above because I know pretty well what such things cost. Know it by experience. Have put on such bows on several boats. The Metropolis for one. Can't tell exactly what her's cost. I did know. There is a difference in boats. Such a stem as her's you cannot have replaced for a
259 less sum than I have stated.

Quest. What was the difference in the cost of repairing the Dove with wood in the way in which she was repaired and in repairing the iron on the stem?

Ans. It is difficult to answer correctly. It would be the difference in repairing the iron. I cannot give any idea in dollars & cents.

D. McCOLLUM.

Sworn & subscribed before me on July 19th, 1871.

WM. D. WILKINS,
U. S. Comm. East. Dist. Mich.

260 And the said JOSEPH NICHOLSON, being carefully examined, and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy, did thereupon depose, testify, & say as follows, viz:

I am marine-inspector of the Detroit Fire and Marine Insurance Co. We had an insurance on the steamer Dove at time of her collision with the Mayflower. I superintended raising her and bringing her to Detroit. (Exhibit A shown to witness.) The expenses named herein were incurred under my direction in raising the Dove and getting her to Detroit. I am acquainted with the raising of vessels and the amount paid. The items of this bill are reasonable. The loss was settled on the basis of this adjustment. The next item presented is of $100 paid to Capt. Nicholson. This item is for staying here and not going away, to see to the raising and paying the bills. (Taken subject to objection.) I was about leaving town, & Gardner offered me this sum to remain here for the above purpose. This was a reasonable charge for such service. I saw to the got the value of the freight on her, which cost a good deal of running around. I have received above amount. I am
261 acquainted with the bills for merchandize lost and damaged as above mentioned in the adjustment marked "A." The amount of loss is taken from the bills of lading. The amount of damage is shown in the adjustment. The loss is ascertained by taken' the receipted bills of lading and ascertaining from them the amount short, and the damaged condition was shown by those who appraised the goods.

(Objection taken to evidence in regard to loss of cargo & freight as incompetent and irrelevant.)

Cross-exam.:

I know steam'r Eighth Ohio, named in adjustment. She is a side-wheel passenger-steamer, a small steamer. A fair price for her services

per day is the price named in the adjustment at that time. $140 a day was a fair price for her services at that time. We used her for a boarding-house, in going from place to place to get materials in bedding the Dove up to keep her from rolling over, and for any other service in which we might need her. The River and Lake Shore Line were her owners at this time. Another vessel equally suitable for such purpose might possibly have been got at that time for a less sum. We did not look round to get another one. In raising the Dove and bringing her to Detroit I was acting for her insurance company. In acting for the company, as I did in this case, as a general rule I make special contracts for the services of any vessel like this one, but in this case I did not. I made no contract in this case with the Eighth Ohio before start-
262 ing. I did afterwards, a day or two after we went up there, when I found it was going to be a larger job than we thought at first. I made the contract with Mr. Solomon Gardner on the decks of the Dove. The $140 a day was a settlement between Gardner & I. He wanted more and I offered less, and we settled on this sum for the use of the vessel and her crew. I don't remember the details of the bargain. I first offered less than $140. It was made just like all other bargains. The sum we settled down on was, I suppose, a fair sum for the steamer's services. Can't remember the sum I first offered. We tried to get her as cheap as I could. I got her for what I supposed was a fair sum. There was the usual amount of words which generally pass in such bargains. I don't remember what this steamer has ever received for like services in such a case. The $140 a day was for services of steamer or her crew. Don't remember how many men she had employed on her at this time. When she first went up to where the Dove lay, I don't remember who took her up; it might have been Captain Blodgett. I do not remember whether she was or had been in commission just before I engaged her to go up there. I had charge of her after she got up there. She was under my exclusive control from the time we got
263 up there until we returned with the Dove to Detroit. Part of the time Mr. Blodgett and part of the time Capt. Sloan had charge of her seamanship, and part of the time I went myself. Part of the Dove's crew, who remained there, had to live and work on the Eighth Ohio, but she had a crew of her own, enough to work her. I do not remember how many. The men of the Dove who are named in the adjustment did not make up the crew of the Eighth Ohio. They did a good deal of work on the Eighth Ohio, as did, at times, everybody we had there. There was no regular captain of the Eighth Ohio while she was up there. There was some one who acted as her mate. I know Broadbridge, who is named as mate in the adjustment. Believe he was mate of the Dove. No one, except as I have said, had principal charge of the running of the Eighth Ohio while she was up there. Westaway did not act as engineer. The item of $100 of which I have testified has been paid me by Mr. Baer. It was to induce me to give up a trip to Phila. & stay at home and attend to the survey and collect the bills. They were entirely independent of any services as adjuster. The services were entirely for the use of the Dove and the accommodation of her owners. I got the bills of lading at the office and from Mr. Baer & Mr. Jerkes. I got the names of the shippers from the little tags which came to the
264 dock with the freight. The amount of damage to the cargo was appraised. I got all my information in respect to the merchandize on bills of lading at the office of the libellants. A part of it also came under my personal observation.

In. What are the usual rates of dockage in a case like this?

(Taken subject to libellant's proctor's objection as irrelevant.)

Ans. I have known 30 cts. per ton for so many days. That is the average price for single dockage. It depends generally upon how long a vessel stays.

Redirect exam.:

It was for my interest as agent for the insurance company to make these bills as low as possible. (Taken subject to objection.) I did so make them as low as I could.

JOS. NICHOLSON.

Sworn & subscribed before me on June 23d, 1872.

WM. D. WILKINS,
U. S. Comm. East. Dist. Mich.

Fees, $1.50.

And the said ROBERT SHIELDS, being about 36 years old, and having been by me first carefully examined & cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth in the above matter of reference, did depose and say as follows:

265 In 1869 I lived in Detroit, and was dock-clerk in E. B. Ward's warehouse. I know the shipments on steam'r Dove on occasion of the trip on which she collided with the Mayflower. I checked the goods as they went on board the Dove, and have now the book containing the bills of lading of such shipments. I see by this book that the following goods were shipped on the Dove on May 31st, 1869, being the evening of the collision: W. Bedford, 2 bbls. of plaster; J. Cochran, 15 kegs of beer; B. R. Bell, a box or a bbl. tobacco & a jar of snuff; N. C. Hote & Co., a ease wagon-grease, 2 boxes cheese, 2 bbls. of sugar, 1 box merchandize, 1 box starch, 1 bbl. herring, 3 case matches, 3 doz. eggs; L. S. King, 5 bbls. flour; H. McMoran, 20 bbls. flour; E. McGowan, 1 box tobacco; Moss & Mills, 10 bbls. pork, 3 bbls. crackers; B. Stronse, 1 box & 1 half-barrel merchandize; J. C. Sherman, 4 fish-cans; Wm. Van Camp, 15 bags potatoes, 5 bags oats, 1 box dry goods, and 5 bags meal; L. Wallace, 22 trunks; H. Whiting, 10 boxes glass ware & 1 case merchandize; H. Wilcox, 1 barrel & 1 keg. These goods were all shipped on the Dove on that evening.

266 Cross-examina.:

Of the contents of these packages I have no personal , and to-day I have no personal recollection, but rely on those books. Each shipment was gone over a second time, and checked on this book in my presence by the clerk when the boat returned. The heading of the paper now shown me is, I suppose, the form of the shipping-bill I used at the time. I cannot, however, be certain about it. Others besides myself signed the receipts presented. These were in different forms as used by different mercantile houses; no forms of receipts to shippers were used. The shippers furnished their forms of receipts.

ROBERT SHIELDS.

Sworn & subscribed before me on July 20th, 1871.

WM. D. WILKINS,
U. S. Comm. East. Dist. Mich.

267 And the said SOLOMON GARDNER, having, been by me first carefully examined & cautioned and duly sworn to testify the truth, the whole truth, & nothing but the truth in the matter of reference aforesaid, did thereupon depose, testify, and say as follows, to wit:

I am a stockholder in the River & Lake Shore Steamer-Line. Have been engaged in steamboat-business 20 years & over. Am acquainted with the rental value of steamers and the sums for which they could be chartered in 1869. The worth of the use of the Dove and the sum for which she could have been chartered per day, in 1869, the charterer paying expenses, I am acquainted with.

Question. What was that sum in 1869?

Ans. A fair charter would have been $125 per day. I would not have chartered her off of the line for that sum.

(Objected to.)

The morning after collision we took the steam'r Eighth Ohio & went up to the wreck. No bargain was made. I closed the bargain for her services with Nicholson on the deck up at the wreck; we bantered on the price some, & I took less than I had asked at first. Her use per day, for the use for which she was made, I furnishing the crew and paying expenses, was worth $140 per day.

Cross-examined:

I owned about a little more than half of the stock in this steam'r
268 line. The Eighth Ohio was, as to insurance, a No. 1 class vessel. She is a smaller boat than the Dove, but would carry more; she is wider. At this time the Eighth Ohio had just been purchased of Ohio parties, and was at the dock, & the joiners had just commenced putting a new cabin in her. She was at the dock undergoing these repairs, & I sent them away when Nicholson hired her. Before I bought her she had been running that season out of Sandusky to Ohio ports. She had just got here a day or two before. I would rather charter the Dove for a day than a longer time; $125 a day would be a small sum for her. I fix that sum for a month or a day or a season. It makes no difference as to time. I fix that sum on that route; on other routes she might not be worth anything. Do not know of any one who was offering such a sum for the charter of such a boat at this time. There might have been. I had no boats of my line lying idle at that time.

The Dove has been chartered for a day at a time quite a number of times. I furnished the crew and supplies of the Eighth Ohio. I thought the sum given was a fair market-value at the time. Nicholson thought so too, or he would not have made the bargain. I suppose the insurance
co. paid that sum for the use of the Eighth Ohio. My expe-
269 rience is that steamers could not have been chartered in Detroit at that time for such sum or as cheap as same.

Redirect:

I have had occasion before to hire boats frequently to help our boats off when they got aground. The prices paid compared with that paid for the Eighth Ohio (objected to as incompetent) in that I always paid more than I paid for her. I never hired a boat as cheap as that. We paid $350 or $300 for pulling the Huron off this present spring. I never hired a boat for no such price. We always had to pay more.

Recross-ex.:

The service I speak of as rendered the Huron was service rendered a tug in going up to a steamer, giving her one pull & she came off. Don't know the name of the tug that rendered the service. The price I paid the tug for the above service does not represent the ordinary charter-price of a tug averaged on the entire season.

Redirect exam.:

When Nicholson was getting off the boat, I told him I wanted

him to stick by her or get her off if he could. I do not know if I told him I'd pay him for it; I suppose I did; I suppose I said I'd make it right with him. When we got her on the ways & pretty near all repaired, we had all her bills out & had a good deal to do to get a settlement; and Nicholson told me he had to go East on some excursion.

I told him if he would stay at home and help get up all the
270 bills of lading and settle all the damages, I would give him $100 for it.

S. GARDNER.

Sworn & subscribed to before me on July 20th, 1871.

WM. D. WILKINS,
U. S. Comm. East. Dist. Mich.

And the said RENSALAER VAN DYKE, having been by me first carefully examined & cautioned & duly sworn to testify the truth, the whole truth, and nothing but the truth in the above matter of reference, did depose and say as follows:

In the year 1869 I was clerk on steamers of River and Lake Shore Steamboat Line; was on steamer Huron at time of Dove's collision with Mayflower. I was aboard of the Dove several times while they were getting her off, when they were repairing her. The fresco-work on her cabin was painted on canvas, and, her cabin being sunken under water, this was a good deal damaged, the tacks drawn out, the paint spoiled, and her cornice was also injured, but I cannot give the amount of the damages.

Ques. Can you state what the rental value of the Dove per day is, the charterer paying expenses, on such a route as she was running?

Answ'r. I should think it would be in the vicinity of a $100, perhaps more.

271 I never chartered any steamer, but have been clerk in Ward's line of steamers a long time.

Cross-exam:

I have my opinion as to her rental value upon the amount of her trips and the cost of running. I would be willing to give that sum for such a steamer now & would last season. Could not give the rental value of the Dove per day for thirty day' consecutively in season of 1869.

RENSALAER VAN DYKE.

Sworn & subscribed before me on July 20th, 1871.

WM. D. WILKINS,
U. S. Comm. E. Dist. Mich.

And the said , being about the age of years, and having been by me first carefully examined & cautioned & duly sworn to testify the truth, the whole truth, & nothing but the truth in the
272 above matter of reference, did thereupon depose & say as follows:

273 Depositions taken before Hoyt Post, notary public, by consent of parties, in the presence of H. B. Brown, proctor for libellant, and F. H. Canfield, for respondent, commencing October 30th, 1871.

JOHN A. SLOAN, a witness produced & sworn on behalf of the libellant, deposes and says:

I was master of the steamer Dove at the time of her collision, & had

been ever since she was built. I don't remember exactly how long it was. I am acquainted somewhat with the cost of fitting up boats with furniture, bedding, crockery, &c.; also with the value of cornices, frescoes, & ornamental work done on cabins of boats, at least so far as purchasing them is concerned.

Q. What do you estimate the damage done to the cornices of the Dove by the collision?

A. I couldn't tell you exactly as to the cornices. I can tell you my estimate as to the damages to the cornices, the head-lining, and the frescoes, all together.

Q. Well, how much was that?

A. It was about $300.00.

Q. What was the damage to the bedding & furniture, including the crockery, cutlery, and lamps?

A. It was about $250.00. I am accustomed to buying cabin-furniture & lines for vessels, and know the market-price.

274 Q. Have you superintended and paid for fitting up cabins?

A. I have done a good deal in fitting up cabins. I never superintended wholly alone.

Q. Are you acquainted with the rental value of steamboat-property?

A. Yes, sir.

Q. What was the nèt rental value of a vessel of the character & size of the Dove over all expenses in the month of June, 1869?

(Objected to as incompetent.)

Q. By the net rental value I mean what could such a vessel be chartered for, the charterer paying expenses?

(Same objection.)

A. I don't really know how to get at that, because it might depend on the line of business she was engaged in.

Q. What would be a fair price to pay for a boat to take the place of the Dove in the trade she was engaged in?

A. I know what the Dove was doing, but I don't really know how to get at the answer to your question.

Q. What would the Dove have earned per day, deducting running expenses, during the time she was laid up?

(Objected to as incompetent.)

A. She was earning over $200 a day. By this I mean her gross earnings.

Q. About what were her running expenses per day?

275 A. About $80?

Q. Give your estimate of the damage done to the lines.

A. I should think about $200.00.

Q. Give your estimate of the damage done to the carpets.

A. There was damage do' to only one carpet in the upper cabin. I should say the damage was $50.00.

Q. Did you include this in your estimate as to damage to furniture in answer to my former question?

A. I did not.

Cross-examined by Mr. Canfield:

Q. What part, if any, did you take in repairing the Dove?

Q. I staid there and looked after the timber that was going into her, the painting and scrubbing, & all the general repairs, while she was in dry-docks.

Q. What part of the cornice was injured?

A. All in the cabin, except one side.
Q. What was the nature of the injury?
A. It pealed it all off. The sea washing into the cabin washed it off.
Q. Do you know what it cost to replace it?
A. I do not, the cornice alone.
Q. Do you know how much a foot such cornice cost?
A. I don't know how much alone the cornice would cost; I in-
276 cluded the gilding, the fresco-work, & cornice, and all. I know how much it all cost together, because I got a bid on it.
Q. And painting do you include?
A. Yes; in the cabin. That includes everything in the cabin.
Q. Then you don't know what it actually cost to repair the cabin?
A. I did know that that was the lowest bid I was able to get to replace it.
Q. When were the repairs about which you have testified made?
A. The repairs to the building, and to the window-cornices, and to the frescoing was all made while she was lying at the dry-dock.
Q. Were any portions, and, if so, what portion of these repairs made since the sale of the Dove by the libellants?
A. None of them were made after.
Q. How did the condition of the cabin differ at the time the libellants sold the Dove from what it was at the time of collision?
A. I should think it would have taken about $100 when she was sold to put her cabin in as good repair as it was in at the time of the collision.
Q. Do you include that $100 in the estimate which you have made of $300?
277 A. Yes, sir.
Q. You were interested in the Dove at time of the collision?
A. I was.
Q. And you are now part owner of the Dove?
A. Yes, sir.
Q. You were a stockholder in the libellant corporation at the time of the collision?
A. Yes, sir.
Q. How long did you continue such?
A. Until about the first of November, 1869.
Q. When was the Dove withdrawn from that route?
A. Some time the latter part of May, 1870.
Q. You run her on that route on an arrangement with libellants after you bought her?
A. Yes, sir; we run her alternate days with the Huron until the Milton D. Ward took her place.
Q. Why was she withdrawn from this route?
A. Because she didn't belong to the parties that run that route; and we had an arrangement that we would leave that route when their new boat was done; and since then we have run on the Amherstburg route.
Q. The St. Clair River route wouldn't justify running another boat?
A. It wouldn't, to run in competition with that line.
278 Q. Would the business have justified the libellants in running a third boat during the season of 1869?
A. I would take a third boat and run on the line at any time, & would then, if I could, make an arrangement with libellants not to cut down on prices in competition with me.

Q. The earnings of the libellants' boats on that route depended largely, did it not, on the monopoly which they held on that route?

A. Of course it did.

Q. Considering the monopoly which the libellants have, what would be the value of the use of a boat like the Dove to any other person on this route?

(Objected to as irrelevant.)

Q. She wouldn't be worth a cent to a man like me to run in opposition to libellants.

Q. When did the Dove make her first trip after the collision?

A. I think it was about the 27th or 28th of June, 1869.

Q. What was her condition in respect to repairs then?

A. She wasn't quite done.

Q. What remained to be done?

A. I don't recollect. I know we had some carpenters and painters aboard after we came out.

279 Q. She had her walking-beam in?

A. Yes, sir.

Q. How was her machinery?

A. As far as I know, it was all right. She required some lining up; otherwise her machinery was all right.

Q. Lining up wouldn't include taking out and putting in walking-beam?

A. They might have to take out the walking-beam to fix her center-pin or the brasses of the pillar-blocks.

Q. If the machinery were seriously out of repair, the repairing of that would progress with the other repairs, would it not, while she was in dry-dock; at least, those repairs would be made before she started on her trips?

A. The machinery was not seriously out of repair—nothing broken—but the engine was out of line, and had to be lined to run.

Q. How long could she run without being lined?

A. If there was anything seriously out of line it would have to be fixed at once to run with safety.

Q. Considering how the Dove was sunk, is it not natural to suppose that the repairs to her machinery, if any were necessary ex-

280, 281 cepting the lining up, would progress with the other repairs?

A. I should think so. About taking out the walking-beam, it couldn't be done as cheaply at the dry-dock as elsewhere, where we could have shears to lift it out.

Q. If the walking-beam was taken out & put in again, & the piston & cylinder & connecting-rod also, on July 31st, run then a month after the Dove made her first trip, would you suppose that those repairs were made necessary by something subsequent to the collision, considering the way you run the vessel and all?

A. I should think any work done a month afterwards, unless the contrary was shown, belonged to something else than the collision.

Redirect examination by H. B. Brown:

Q. What officers of the Dove remained in the employ of libellants while she was laid up?

A. The master, the first mate, engineer, second engineer, &, I think, all the crew, except there was a man claimed to be second mate who went aboard the Mayflower.

Recross-examination by F. H. Canfield:

282 Q. What were these men doing while the Dove was laid up?

A. They were cleaning up & scrubbing, but were not engaged all the time on the boat. The mate lived on river St. Clair, and went up home and staid about two weeks.

JOHN A. SLOAN.

Subscribed & sworn to before me this 30th day of October, A. D 1871.

HOYT POST,
Notary Public.

283

284 EBEN WARD, a witness produced & sworn on behalf of libellants, examined by H. B. Brown, deposes & says:

I live in Detroit, Michigan, and have owned steamboats for 25 years. I am acquainted with the rental value of steamboats during the season of 1869. I have owned and been interested in about a dozen steamboats.

Q. What was the worth of a boat of the size and description of the Dove per day over all expenses in the month of June & July, 1869, on the river St. Clair route?

A. The month of June, according to my experience, would be the best month of the year, and I have had a considerable experience on that route. I should think $125 to $130 a day on that route during the month of June. I mean that net.

Q. What, in your judgement, would the Dove earn, net, per day on that route during the month of June, 1869?

(Objected to as incompetent.)

A. I think she would clear, over and above all expenses, as much as I have above stated per day.

Cross-examined by Mr. Canfield:

I am not, and never have been, a stockholder in libellant's corporation.

285 Q. The earnings of the Dove would depend upon various contingencies, would it not?

A. Yes, sir; I suppose it would.

Q. What contingencies?

A. There might be many. Perhaps the cholera might rage on the river, or fire on the shore, such as we have had this fall, would interfere with the profits of the route. There might be competition that would lessen the profits.

Q. Suppose another boat had been put on that line—another similar boat—what would have been the effect?

A. Another similar boat, well managed, would damage them.

Q. There was no general competition that season, was there, on that line?

A. No, sir.

Q. To what extent did the libellants have the monopoly of this route?

A. There was no regular line running against them that damaged them any. There might have been, now & then, a small boat running for a little while on part of the route, but no serious opposition.

Q. Do you know what boat took the place of the Dove while she was laid up?

A. The Huron & Sandusky, I believe.
Q. They belong to the libellants?
A. Yes.

286 EBEN WARD.

Subscribed & sworn to before me this 30th day of October, A. D. 1871.

HOYT POST,
Notary Public.

DARIUS COLE, a witness produced and sworn on behalf of libellants, and examined by H. B. Brown, deposes & says:

I have been sailing and steamboating for 25 years. I have been interested in ten boats, I should think.

Q. Will you state whether you are acquainted with the rental value of steamboats during the season of 1869?

A. I was running a steamboat that summer. I ought to be acquainted with it. I was.

Q. What could the Dove been chartered for during the month of June, 1869, the charterer paying expenses; how much per day?

(Objected to as incompetent.)

A. I don't know as I could answer what she could have been chartered for, but I know what she would be worth.

Q. How much?

A. Such a boat as the Dove ought to bring from $110 to $125 a day, the charterer paying all expenses. If I owned the Dove, I shouldn't want to let her go any less than that.

287 Cross-examined by F. H. Canfield:

Q. Do you know of any such boats as the Dove being chartered during the season of 1869?

A. I don't know as I do.

Q. Was there any market-value for the rent or use of such a steamer as the Dove during the season of 1869?

A. I should say there was.

Q. What do you understand by the market-value?

A. What the use of such a boat is worth, is what I understand by it.

Q. To whom?

A. To any one who wanted to use her.

Redirect examination by H. B. Brown:

Q. What do you think the Dove would earn per day on a good paying-route?

(Objected to as incompetent.)

A. From $110 to $125 a day.

DARIUS COLE.

Subscribed and sworn to before me this 30th day of October, A. D. 1871.

HOYT POST,
Notary Public.

288 JOHN P. CLARCK, a witness produced & sworn on behalf of libellants, & examined by H. B. Brown, deposes & says:

I live in Spring Wells, near Detroit; I have an interest in steamboats, and have had six or eight years; have been interested in several different boats.

Q. Are you acquainted with the rental value of steamboats during the season of 1869?

A. That's a pretty difficult question to answer. There are very few boats kept to rent.

Q. Do you know what would be the worth of a boat of the size and character of the steamer Dove, during the month of June, 1869?

A. I know from the general business, but not from their being chartered. Such a boat ought to earn about $120 a day; I mean that net, the chartering party paying expenses.

Cross-examined by F. H. Canfield:

Q. Do you know of any such boat being rented during the season of 1869?

A. Not directly; not of that capacity.

Q. Have you any personal knowledge of the earnings of the Dove during the season of 1869?

289 A. I have seen her figures; but so far as knowing personally anything about it, I don't.

Q. Do you know the route and kind of business she was engaged in?

A. Yes; I have frequently been over the route.

Q. Have you ever known a vessel of the capacity of the Dove being chartered for a period of 30 days for the same or a similar route, or similar business?

A. I don't know that I have. Boats are sometimes chartered here for a short time and for some specific business.

J. P. CLARCK.

Sworn & subscribed to before me this 30th day of October, A. D. 1871.

HOYT POST,
Notary Public.

CHARLES C. BLODGETT, a witness produced & sworn on behalf of libellants, & examined by H. B. Brown, deposes & says:

I live in Detroit, and have been engaged in steamboating about 20 years; have been interested in several boats.

Q. Are you acquainted with the rental value of steamboats during the season of 1869?

A. I am acquainted with the value of the use of them.

Q. What could a steamboat of the size and description of the Dove been chartered for per day during the month of June, 1869, the

290 charterer paying expenses?

A. About $125 to $130 a day.

Q. What would the Dove earn over all expenses during that month on route between Pt. Huron & Detroit?

(Objected to as incompetent.)

A. I think she would earn $150 a day.

Cross-examined by F. H. Canfield:

Q. Have you ever been interested in boats on that route?

A. Yes; I have sailed boats on that route.

Q. When?

A. At different times for the last 10 years.

Q. Were you so engaged in 1869?

A. Not on that route.

Q. Were you in 1868 or 1870?

A. No; not directly.

Q. When were you last engaged in sailing on that route?

A I have been on the route occasionally to take the place of masters, when they were absent, in the last two or three years. Was over that route in that way in 1869 & 1870.

Q. What boats?

A. I think the Huron & Sandusky one or two trips each, & I think I sailed the Dove once or twice.

Q. Can you state what were the earnings of either of the boats you had charge of per day?

291 A. From $200 to $250.

Q. Have you any personal knowledge of the earnings of the Dove for that season?

A. I have seen her figures, but have no personal knowledge.

Q. Your estimate of the rental value of the Dove is based upon what you suppose would have been her probable earnings, is it not?

A. Yes.

Redirect examination by H. B. Brown:

Q. What would you have been willing to have chartered her for if you had owned her?

(Objected to as incompetent.)

A. I should have wanted $150 a day for her.

CHARLES C. BLODGETT.

Subscribed & sworn to before me this 30th day of October, A. D. 1871.

HOYT POST,
Notary Public.

DANIEL GALLAGHER, a witness produced & sworn on behalf of libellants, and examined by H. B. Brown, deposes & says:

I live in Detroit; have been engaged in steamboating, more or less, for about 30 years. I think I have been interested in from a dozen to fifteen steamboats.

Q. Do you know the rental value of steamboats for the year 1869?

A. I think I do about as well as anybody.

Q. State what a steamboat of the size and description of the

292 Dove could have been chartered for per day, the charterer paying expenses, during the month of June, 1869.

A. I question whether one could have been chartered at that time. Perhaps one could have been chartered for from $120 to $140 per day, if you could have found one that you could charter.

Q. Suppose you had owned a boat like the Dove, what would you have been willing to charter her for?

(Objected to as incompetent.)

A. That would depend on whether I had my boat on a route that was paying well or not. But ordinarily as transactions of that kind would come along from day to day, I should say from $120 to $130 a day.

Q. What would the Dove have earned during the month of June, 1869, upon the route she was running that season?

(Same objection.)

A. That is a difficult question to answer; I should say, however, from $120 to $140 per day. I mean that net.

Cross-examined by F. H. Canfield:

Q. You base your estimate of the value of the use of the Dove upon her probable earnings?

A. No, not exactly; I should want from $120 to $130 a day for
293 her in business as it ordinarily comes along, so that what I have estimated her probable earnings at was something a little different from that.

Q. Considering what boats were running on this route during the month of June, 1869, and the parties owning them, what would have been the value of the use of a boat like the Dove to be used on that route by other parties than the libellants?

A. I don't think she would have been worth a great deal not to have 3 boats on then.

Q. Do you know of any applications to charter a similar boat at that time?

A. I do not call any to mind now.

Q. You are, and for some time have been, a stockholder in the libellant corporation?

A. Yes, sir.

Q. For what amount did the Dove sell?

A. I don't know the exact amount. It was a kind of a trading bargain.

D. GALLAGHER.

Subscribed & sworn to before me this 30th day of October, A. D. 1871.

HOYT POST,
Notary Public.

JOHN D. BAER, a witness produced & sworn on behalf of libellants, & examined by H. B. Brown, deposes & says:

Q. What men and what officers of the Dove were retained under pay while the vessel was being repaired?

294 A. The captain, the clerk, the first mate, the first & second engineers, the steward and watchman, and wheelsman and two firemen.

Q. Will you state what wages they were paid while the vessel was laid up?

The captain, per month	$150
The clerk, "	80
The first mate	80
The second mate	55
The first engineer	100
The second "	60
The steward	50
The watchman	25
The wheelsman	25
" fireman	25
" "	25
	675

Q. Have you any bills of invoices of merchandize lost?

A. Yes, the following:

Bill of John Cochrane, lager beer	$37 50
" " B. R. Dell, tobacco &c., cigars	73 18
" " G. Strauss, " " "	43 85
" " Moss & Mills	25 36
" " Horace Williams, tobacco, &c.	40 10

Q. Will you state whether the articles named in those bills were all shipped on the Dove on the trip on which the collision occurred?

295 A. They are all in the stubs of goods ship'ed in that day. I have no personal knowledge that they were shipped.

Cross-examined by F. H, Canfield:

Q. Which of these bills of lost goods, if any, have been paid to the consignees by the libellants?

A. None of them.

JOHN D. BAER.

Subscribed and sworn to before me this 30th day of October, A. D. 1861.

HOYT POST.

The examination is here adjourned till November 3d, A. D. 1871.

NOVEMBER 3d, 1871.

Mr. H. B. Brown appears for libellants; F. H. Canfield appears for respondents.

JOHN WESTAWAY, a witness produced & sworn on behalf of libellants & examined by H. B. Brown, deposes & says:

My business is marine engineer. I am running the Dove yet.

Q. Did you have anything to do with lining the engine of the Dove after her collision with the Mayflower.

A. After we had run a few trips we found that she was so much out of line that we had to stop and line her.

296 Q. Where was the Dove lying when the lining was done?

A. At Campbell & Owen's dock. We were two days lining her; there was one man beside my crew; my crew belonged to the boat; there were two engineers and two firemen of my crew, and then there was one man out of the shop, out of Cowie's shop; I had to shift my shaft & shift the walking-beam and the slides. There was nothing done to the piston & cylinder that was caused by the collision. There was a brass—the crank-pin brass—all cut to pieces on account of her working while the engine was out of line; I had to get a new one. The boat was laid up the two days we were lining her.

Cross-examined by F. H. Canfield:

This lining was done right after we came out, the forepart of July; we first discovered she was out of line as soon as we commenced to run, after we came out of the dock.

Q. Do you recollect the taking out and the putting in the walking-beam refer'ed to in Exhibit G.

A. Oh, yes, I recollect that; that job took us some three or four days. I am not positive whether the lining of the engine was before or

297 after the taking out of the walking-beam refer'ed to in that bill. That was not the same job as the lining at all. We didn't take the beam out when we lined her up. All we took the beam out for was to tighten the centre-pin in the beam.

Redirect examination by H. B. Brown:

The taking out the walking-beam was not caused by the collision at all.

JOHN WESTAWAY.

Subscribed & sworn to before me this 3d day of November, A. D. 1871.

HOYT POST,
Notary Public.

NOVEMBER 6th, 1871.

ROBERT SHIELL, a witness produced & sworn on behalf of the libellants & examined by H. B. Brown, deposes & says:

Q. Do you know from your books of a bill of lager beer being shipped to J. Cochrane?

A. I do—15 kegs.

Q. Was there any tobacco & cigars shipped to B. R. Dell?

A. There was a box, a butt of tobacco, & a jar of snuff.

Q. To G. Strauss?

A. A box & a half barrell. St. Clair, that is.

Q. Moss & Mills?

298 A. There are two consignments. There were 10 bbls. pork, 3 bbls. crackers, and 3 bbls. vinegar, & looks like 4 bbls. dried apples, & 12 something—I cannot make it out; it is illegible on the book.

Q. How about Horace Williams?

A. A keg & two boxes tobacco. Pt. Huron, that is.

Cross-examined by F. H. Canfield:

Q. The book from which you testify is the impression-book?

A. Yes.

Q. Kept by whom.

A. It was kept by Mr. Rickitson at the time I was check-clerk on the dock. I receipted for the goods to the merchants who shipped them. Immediately after the loss I compared the book—this book—with the freight from the merchants in this city and found them to agree.

Q. Of the contents and value of these several items you know nothing.

A. No, sir.

ROBERT SHIELL.

Subscribed & sworn to before me this 1st day of November, A. D. 1871.

HOYT POST,
Notary Public Wayne County, Mich.

Filed Feb. 3d, 1872.

WM. D. WILKINS,
U. S. Commr.

Filed Feb. 12, 1872.

D. J. DAVISON, *Clerk.*

299

300 *Libellant's statement.*

Items of damage to Dove by collision:

A. Gen. average expenses raising, &c	4,962	48
Add deduction of ⅓ new for old	132	33
B. John P. Clark's bill	2,572	95
C. " " additional bill	25	
D. D. A. Ross & Co.'s bill for lumber	120	29
E. Campbell & Owen's bill		
F. W. M. Dwight & Co.'s bill, hard lumber	4	65
G. Detroit Stove-Works bill, stoves	84	50
H. John L. Agnes, materials	7	40
I. D. Lester's bill, lumber & labor	26	
J. John Quigley, plumbing	28	10
K. John Boydell, paint, &c	187	84
L. Painters' time	56	25

M.	" " 2nd voucher	40 37		
N.	" " 3d "	37 30		
O.	David Dickson's bill for glass	8 35		
P.	Carpenters' time	46 24		
Q.	" " 2d voucher	82 53		
R.	" " 3d "	78 75		
S.	Buchanan's board-bill	57		
T.	Carpenter's bill	31 80		
U.	Henry Campbell, bill for labor	4		
V.	Joseph Grant, board of crew	10		
W.	Buchanan's add. board-bill	4 55		
X.	Alex. Bell, work at dry-dock	12 75		
Y.	Ikie Willis, " " "	5 43		
	Team to go for tug	5		
301	Carrying shears to dry-dock	3		
	C 2. Use of sail	17		
	Washing bill, Mrs. M. Williams	17 38		
	G. Smith, lumber at place of Cole	29 04		
	Brought forward			8,698 28
	Loss on stern, D. McCollums	80		
	Jos. Nicholson's bill	100		
	Damage to cornices, head-lines, and frescoes	300		
	Bedding & furniture, crockery, &c	250		
	Damage to lines	200		
	" " carpets	50		
	28 days' demurrage, 31 days, at 100 per d—do due, month's wages of officers & crew	675		630
	Freight on goods lost			

Interest on above from date of adjustment to date of report.

Date & adjustment, July 30th.

Only 28 days allowed, rejecting $45 for two days' wages, at $22.50 per day.

302 *Libellant's statement.*

	Items of damage to cargo:		
H.	C. Hope & Co	$25 50	
L.	S. King	5	
H.	McMorran & Co	20	
E.	M. Gowan	2 75	
	Moss & Mills	8 40	
	" " on crackers & cheese	30 03	
J.	C. Thurman, fish	5	
W'm	Van Camp, dry goods	31 85	
L.	Wallace, trunks	14	
H.	Whiting, merchandize	147 53	
H.	Wilcox, tobacco	16 45	
A	2. Wm. Snow, wire	5	
A.	Bedford, plaster	3 60	
	Freight, per adjustment	74 63	
			389 74
	Merchandise lost:		
John	Cochrane, lager-beer	37 50	
B.	R. Dell, tobacco & cigars	73 18	
G.	Strauss, " "	43 85	

Moss & Mills	35 86	
Horace Williams	40 10	
		230 49
		620 23

Interest on above from date of collision to date of report.

303 Date of collision, May 31st.
304 Filed & marked by me Feb. 1, 1872.

WM. D. WILKINS.

Gross earnings of steamer Dove for May, 1869.

May	3.	Trip 10	$499 33
	6.	" 11	406 59
	11.	" 12	609 23
	14.	" 13	283 21
	17.	" 14	496 40
	20.	" 15	299
	21.	" 16	91 43
	22.	" 17	97 30
	23.	" 18	205 83
	25.	" 19	266 14
	26.	" 20	227 78
	27.	" 21	152 03
	28.	" 22	145 07
	29.	" 23	227 39
	30.	" 25	172 28
		Premium on coin	4 06
		Rent of saloon	50
			4,532 59

305 Gross earnings of steamer Dove for July, 1869:

July	1.	Trip 29	298 87
	2.	" 30	166 86
	3.	" 31	326 25
	4.	" 32	359 14
	6.	" 33	305 54
	7.	" 34	233 30
	8.	" 35	250 48
	9.	" 36	209 32
	10.	" 37	309 04
	12.	" 38	176 17
	13.	" 39	201 90
	14.	" 40	240 57
	15.	" 41	146 20
	16.	" 42	172 15
	17.	" 43	196 32
	19.	" 44	231 59
	20.	" 45	230 37
	21.	" 46	184 37
	22.	" 47	220 81
	23.	" 48	256 55
	24.	" 49	242 94
	26.	" 50	222 25
	27.	" 51	171 39

28.	"	52	214 05
29.	"	53	151 32
30.	"	54	170 89
31.	"	55	209 82
	Premium on coin		21 04
	Rent of saloon		50
			6,167 70

306 In the district court of the United States for the eastern district of Michigan.

THE RIVER & LAKE SHORE STEAMBOAT COMPANY, owners of the steamer Dove,
vs.
THE PROPELLER MAYFLOWER. } In admiralty.

Depositions of witnesses produced on the part of the defence in the above-entitled cause, and sworn before me, the undersigned, a notary public in & for the county of Wayne, State of Michigan, on the tenth day of January, A. D. 1872, by the consent of the parties hereto, to be read and used on the hearing of said cause in said court, subject to all legal objections to the relevancy and competency of said depositions.

H. B. Brown, esquire, appeared for the libellants. F. H. Canfield, esquire, appeared for the respondent.

CASSIUS P. TAYLOR, being duly sworn, says: The 8th Ohio I knew the rest of the season after the collision of the Dove & Mayflower
307 & the business she was engaged in. My office was at her dock. As to the difference between her and the Magnet, there were a great many things to be taken into consideration. The Magnet was a regularly equiped wrecker. She did nothing else. She laid at the dock when not engaged wrecking. The 8th Ohio at the time laid here at the dock in ordinary, awaiting repairs. Therefore, I see no comparison between the two boats at all. I knew the steamer Dove then & know her now. In capacity & capability the 8th Ohio is less than half that of the Dove. On the route the Dove was running, I think she could make three trips to the 8th Ohio's two. The value of the use of a boat is very materially affected by its capacity & capability. If the capacity and capability of one boat is twice that of another, her services are worth twice as much. With our tugs we get pay according to the size and capacity. There was no such thing as a market-value of the services of a boat like the Dove for a period of thirty days, or the period during which she was laid up on account of this collision. The libellants in this case owned or controlled most of the steamers of that class at this time, and they run on certain fixed routes, so there was no
308 market-value for their services. The card of prices fixed by the tug association did not fix a standard of prices for the tug association or for any tug. The tug Samson, December in that year, was let for one hundred dollars a day, and sometimes she got two hundred and seventy-five dollars. The charges were effected by the time, the place where they were going, and the circumstances of each individual case. In 1869, I was stationed at Port Huron as superintendent of the tug association. I am acquainted with the tug business, & know the value of tug services and the value of services of steamboats at that time.

I have been in the tug business for thirteen years. In my opinion the value of the services of the 8th Ohio for the period of eleven days at this period would be worth about seventy-five dollars per day. Having the Dove's crew, and the Dove furnishing fuel, she would be worth to the Dove twenty-five dollars per day. When I say seventy-five dollars a day, I mean as a wrecker & not as a passenger-boat, fully equipped as such.

Cross-exam.:

Ques. If you were compelled to hire a wrecker, & the 8th Ohio was the only one in port, and it was uncertain whether you would need her one day or ten, you wouldn't consider it exorbitant to pay one hundred and forty dollars a day, would you?

309 Answer. Yes, sir. To go to a wreck as the Dove was situated, where she was in very little danger of the sea having any effect on her, and knowing that it would be an unusual occurrence for twelve hours to pass by, that would not give me a better boat for the same money, I should think it good judgement to wait for a better boat.

CASSIUS P. TAYLOR.

Subscribed & sworn to before me this 10th day of January, A. D. 1872.

LEVI L. BARBOUR,
Notary Public Wayne County, Michigan.

Mr. LYMAN A. YERKES recalled for cross-examination by Mr. Canfield.

Q. On what do you base your opinion, given upon your direct examination, as to what the Dove could have been chartered for during the season 1869?

A. On the business she was doing.

Q. Do you know what her average earnings were during the month of May?

A. I think it little over two hundred dollars per day gross. Her average net earnings per day I cannot give.

310 Q. Do you know what the average net earnings were per day in July?

A. I do not remember.

Q. Do you for any month of the season?

A. I could not tell.

L. A. YERKES.

Subscribed and sworn to before me this 10th day of January, A. D. 1872.

LEVI L. BARBOUR,
Notary Public, Wayne County, Michigan.

JOHN R. GILLETT, being duly sworn, says: I reside in Detroit; I am clerk for Mr. Strong; I know the steamboat 8th Ohio; I knew her in the month of June, A. D. 1869; I recollect the collision between the Mayflower and Dove; I recollect the 8th Ohio going to the assistance of the Dove, and saw her while she was being fitted out for that purpose; she was lying near the foot of Cass street, at the dock; there was no one on board but the watchman; she was lying here for repairs, as I then understood from Capt. Blodgett. I do not think she got away until that afternoon to go to the Dove. There was no crew on her. I helped drop her down to the pump-house. Capt. Blodgett said
311 he was not going to take many men, as there were plenty of men up where the Dove was. I do not know all the crew of the 8th Ohio when she went up. When she came back for more pumps she had several of the Dove's crew on board of her. I know there was no mas-

ter on the 8th Ohio. Sloan & Broadbridge, mate of the Dove, had charge of the 8th Ohio when she returned for the pumps. I have been in business connected with navigation twenty-five years. I know the value of the use of tugs; not so much about steamboats. The concerns where I have worked never owned a small class of boats. The value of the services of a boat are very materially affected by its capacity to do business and earn money. The capacity of the 8th Ohio is very inferior to that of the Dove. The Dove is more valuable; it takes a larger crew and more fuel to run her, and she will earn more money. The earnings of the 8th Ohio would be large if they were half those of the Dove.

(This last testimony regarding the ratio of the earnings of the 8th Ohio to those of the Dove objected to by Mr. Brown.)

Q. What, in your opinion, would the services of the 8th Ohio be worth in comparison with those of the Dove?

(Question objected to by Mr. Brown.)

312 Ans. About one-half. The 8th Ohio was not in commission at this time; she was doing no business; she had been lying at the dock for several days.

Cross-examination:

The price charged for tugs going to assist vessels in distress was, for the largest tugs, three hundred dollars. This was the Leviathan, at Mackinaw. The Magnet charged two hundred dollars that year. This was in 1869. The Magnet charged less at other times during that season. Two hundred dollars was the highest price she charged. Nearly all the Detroit tugs that towed through belonged to the association that year.

(Paper shown to witness, and he is asked what it is.)

Answer. This is the card of prices adopted by the Tug Association, which comprised forty-two tugs then. On the back of this paper, under the head of explanation of card-prices, there is the following sentence: "Tugs going outside to assist vessels or crafts in distress, will not charge less than two hundred dollars from the time of being engaged to go until their return to place of starting." It depends on circumstances

313 whether steamboats charge more for wrecking than for other purposes. It is impossible almost always to tell how long it is going to take to do a job of wrecking. The number of first-class tugs in the Tug Association in 1869 was about twenty-five or twenty. The rest were second and third class.

Redirect examination:

The prices referred to in this card were not always lived up to. When they came in opposition with an outsider, or a small vessel that could not afford to pay, an association tug took less than the price. The tug Leviathan belonged at Mackinaw, and not here. She had no competition there. She charged a large price, because she had no other business and no competition. The Leviathan and Magnet differ very greatly from the 8th Ohio in capacity and worth of services. The services of the 8th Ohio would be worth for a length of time, for ten days, say, seventy-five dollars a day.

Recross-examination:

The services of the 8th Ohio would not ordinarily be worth as much as the John P. Clark. For some purposes she might be better in wrecking than the Eclipse, & for others not so good. The Eclipse and John P. Clark belonged to the association that year. The Magnet pre-

314 tends to charge two hundred and fifty dollars other years, but takes less when she can work in her pumps.

JOHN R. GILLETT.

Subscribed and sworn to before me this 10th day of January, A. D. 1872.

LEVI L. BARBOUR,
Notary Public, Wayne County, Michigan.

Filed February 12th, 1872.

D. J. DAVISON,
Clerk.

315

316 EXHIBIT A.—Filed June 23d, 1871. Wm. D. Wilkins, U. S. Comm.

STEAMER DOVE.

This vessel left the port of Detroit, Mich., on the 31st day of May, 1869, with a cargo of mdze. & sundries, bound for Port Huron and intermediate ports; and at about 11 o'clock p. m. of same day, while passing up the St. Clair River, about two miles above Marine City, the night being dark and at times foggy, the steamer running under a check & sounding two whistles frequently, to indicate to approaching vessels that she was keeping the American shore close aboard, made the white light of a vessel which proved to be the Propeller Mayflower, nearly dead ahead. The bell was immediately rung to stop and back, & the engine was immedaitely stopped and backed, and while backing the pro. Mayflower came on apparently at full speed & struck the Dove on the port side of her stem, crushing her in & swinging her around so that she headed for the Canada shore, where she was run into shoal water & aground,
317 & filled rapidly. The next morning steam-pumps & other apparatus with a service steamer were procured, and, after several failures occasioned by the breaking in of her upper works under the pressure of water, she was finally pumped out & placed in dry-dock at Detroit, on the 11th day of June, 1869.

318 STEAMER DOVE.

Bills.	Expenditures.	Genl. ave.	Owners.
388.70.	Phœnix Ins. Co.:		
	1 14-in. pump 8 days, at $45	360	
	Engineer 3 nights extra, 7.50	22	50
	Oil, 3.20; 1 bolt, 3	6	20
420.	Wm. Newton:		
	10½ days' diving, at $40	420	
10.	Robert Scott:		
	Diving, as per agreement	10	
338.20.	Home Ins. Co., of N. Y.:		
	1 14-in. pump 8 days, @ $40	320	
	Engineer 2 nights extra, $15; oil, 3.20	18	20
110.95.	Joseph Nicholson:		
	11 days' services wrecking, @ $10	110	
	Paid telegram to Port Huron		95
123.83.	Viger Brothers:		
	37.160 tons coal for pumps, @ 7.25	223	83
466.78.	H. N. Strong & Gillett:		
	1 14-in. pump 11 days, @ $40	440	
	Engineer 3 nights extra, @ 7.50	22	50
	Oil, 3.20; handspikes lost, 1.08	4	28
319	441. 96. G. P. Dorr:		
	908. 74. 1 14-in. pump 9 days, @ $45	405	
	Engineer three nights extra, @ 7.50	22	50
	Oil, 3.20; repairs, 11.26	14	46
2,300.42.	Forward	2,300	42

STEAMER DOVE.

Bills.	Expenditures.	Genl. ave.	Owners
2,215.06.	Solomon Gardner :		
2,300.42.	Amounts forward	2,300. 42	
	Bill of Steamr. Eighth Ohio, 11 days, @ $140	1,540	
	Eugene Smith, bill lumber	27 04	
	Joseph Wood, " smith-work	7 50	
	John Thompson, " diving	20	
	David Lester, " lumber	11	
	D. McCollum, " carpenter work, 1 saw lost	43	
	D. Lester, " " "	15	
	G. Kanter, for old sail $100		
	Less service, value 25	75	25 00
	1 keg of nails, 5.50 ; 2 bales oakum, $15	20 50	
	Scow Curlew 1 day, to lash to steamer to prevent careering	30	
	Use of 5-in. line & anchor	15	
	Ste'r Huron, services saving cargo & furniture	75	
	Protest and copies, $7 ; telegraph, 6.23	13 23	
	John Sloan, master, 11 days, @ $4	44	
	W. Broadbridge, mate, 11 days, " $2.66	29 30	
320	Weslaway, engineer, 11 days, 3.33	36 67	
	2 deck-hands 11 " @ 1	22 00	
	8 " " 1 " " 83⅓	6 66	
	4 firemen & wheelsmen 1 " 1	4	
	2 cooks 1 " 1, 1.50	2 50	
	4 waiters 1 " " 83⅓	3 33	
	2d engineer & steward 1 " 2	4 00	
	Clerk 1 "	3 33	
	Board for above crew 76 days, @ 1	76 00	
	" diver & assistant 10 days ea., @ $1	30	
	" pump-engineers 36 " @ $1	36	
4,515.48.	Forward	4,490 48	25 00

STEAMER DOVE.

Bills.	Expenditures.		Genl. ave.	Owners.
4,515.48.	Amounts forward		4,490 48	25 00
397.00.	Owners of vessels for repair of damages to steamer in raising her, as per surveyor's estimates	397 00		
	Less ⅓ new for old	132 33	264 67	132 32
20.	John Oades & William Morriss, surveyors, for making survey for estimates of repairs in general average, and saved value of vessel		20	
321				
30.	James J. Clark :			
	Stating this average	30 00		
4,962.48.			4,805 15	157 32

	Contradictory interests & apportionment.	Contributes.	Pays.
	Vessel :		
	Saved value, per surveyors' appraisal	34,000	4,403 68
	Cargo :		
	Saved value, (see apportionment on cargo)	3,062 35	396 64
	Freight :		
	As per freight-sheet 74 63		
	Contributes on one-half	37 31	4 83
	Average, 12,952	37,099 66	4,805 15
	Steamer Dove. General average. Apportionment on vessel :		
	Vessel valued in policies at $18,750, pays		4,403 68
	Buffalo City Ins. Co. :		
	Insurers $5,000 ; pays	1,174 31	
	Detroit Fire & Marine Ins. Co. :		
	Insurance, $1,000 : "	2,348 63	
322	Owners of vessel :		
	Uninsured, 3,750	880 74	
	Commercial Mutual Ins. Co., of Cleveland, re-insurers :		
	The Detroit F. & M. Ins. Co., $5,000 ; pays	1,174 31	

Detroit, July 30th, 1869.

JAS. J. CLARK,
Adjuster.

323 *Apportionment on cargo.*

Total value, $3,062.35; pays 396.64.

Consignees:		Contributes.	Pays.
John L. Lyons, 1 water-cooler		4 50	71
J. Buhl, 2 bbls. tallow		53 82	6 96
A. Bedford, 2 " plaster, total loss.			
J. Cochran, 15 kegs lager	$7 45		
2 " " lost	6	39	5 05
M. D. Carroll, 1 box tobacco		28 72	3 73
H. M. Carrol, 1 " do.		32 85	4 27
S. G. Cady, 1 fish-box		30	3 90
C. Dolmty, 4 doz. chairs		25	3 24
R. B. Dell, 2 boxes tobacco; 1 jar snuff. Total loss.			
G. J. Erskine, 20 bbls. flour & meal		101 32	13 08
C. A. Fitz, 1 cady tobacco; 1 box crackers		15 77	2 02
A. & H. Fish, 1 bale belting		65 80	8 54
L. B. Greene, 1 box & 1 keg tobacco		34 95	4 54
H. C. Hope & Co., groceries, per invoice	145 77		
Less damages	25 50	120 27	15 54
Jacob Hook, 1 cady tobacco		56 10	3 39
L. S. King, 5 bbls. flour	40		
John Law, damages	5	35	4 54
5½ bbls. ale		40	5 18
H. McMorran, 25 lbs. packing		18 75	2 43
" 20 " flour	100		
damage	20	80	10 36
R. W. Mathews, 1 box tobacco; 1 bdl. sacks		22 30	2 90
324 G. McGowan, 1 box tobacco	52 20		
damaged	2 75	49 45	1 42
Mrss. Milles, 14 boxes & 14 bbls. mdze		274	35 49
" Invoice Holmes, Butler & Co		320	41 45
" 10 bbls. pork, 3 bbls. crackers	315		
damaged	8 40	306 60	39 71
G. R. McRider, 15 pieces mdze		23 14	3 00
A. C. Ponsethe, 1 rocking-horse		3 50	45
Amount forward		1,751 84	226 90

Apportionment on cargo.

Consignee:		Contribut's.	Pays.
Amounts forward		1,751 84	226 90
G. W. Pinkham, 1 box boots & shoes		44 45	5 76
Passengers, 3 head cattle		225	29 14
G. Strauss, 1 box & 1½ bbl. tobacco. Total loss.			
J. Schinkest, lot of implements		210	27 19
M. Stewart & Co., 1 box hardware		3 25	42
J. C. Sherman, 4 fish-cars	120		
" damaged	5	115	14 89
F. Saunders, 11½ bbls. tobacco		83	10 75
Wm. Stewart, 1 horse-rake		40	5 18
J. Recor, 1 "		30	3 89
Wm. Van Camp, 1 bale dry goods	63 87		
damaged	31 85	32 02	4 15
H. Williams, 1 keg, 2 boxes tobacco	40		
damaged	21	19	2 46
L. Wallace, 22 trunks	79		
damaged	14	65	8 42
325 J. H. White, 10 kegs paint, 1 can, 1 box mdze		70 55	9 15
H. Whiting, 2 cases mdze	485 72		
damaged	147 53	338 19	53 81
H. Wilcox, 1 bbl. & 1 keg tobacco	24 05		
damaged	16 45	7 60	98
G. Zaetsch, 1 box of tin, 1 roll zinc		27 45	3 55
		3,062 35	396 64

Detroit, July 30th, 1869.

JAS. J. CLARK,
Adjuster.

326 Steamer Dove to S. P. Clark.

1869.

June 12.	To dockage, 13 days			200 00	
	" making keg drift			25	
	" rep'g strap			25	
	" 1 screw bolt, 6 lbs	1s..		75	
	" rep'g 2 screw bolts			1 00	
	" 3 washers			15	
	" making 2 chisels			38	
	" dressing 3 "			30	
	" rep'g 2 bolts			1 75	
	" 2 washers			38	
19.	" 2 lbs. bolts	1s..		2 63	
	" 1 knee			1 50	
	" dressing chisel			10	
	" altering			75	
	" key			13	
	" dressing 2 chisels			20	
	" rep'g 12 screw bolts			75	
	" 1 screw			25	
	" 51 lbs. screw	15..		7 65	
	" 1 bracket			50	
	" 4 carriage bolts	5..		20	
23.	" rep'g brace			2 00	
	" 6 hours smith & helper	8s..		6 00	
24.	" ½ day overtime do			5 00	
	" 154 iron	6..		9 24	
	" 2 straps, 82 lbs.	18..		14 76	
25.	" ½ day overtime smith & helper			5 00	
	" 1,269 lbs. spikes	7..		88 83	
327	To 19 lbs. washers	2s..		4 75	
	" 44 " cut spikes	7..		3 08	
	" 1,108 " iron	6..		66 48	
	" 5½ bales oakum	$7...		38 50	
	" 50 lbs. white lead	15..		7 50	
	Forward				471 01
June 25.	To amount brought forward			471 01	
	" 2½ gallons oil	1 30..		3 25	
	" 3 seam brushes	2s..		75	
	" 30 inches knees	30..		9 00	
	" 667 ft. pine lumber	3..		20 01	
	" 11,679 ft. oak lumber	4½..		525 55	
26.	" 11 days foreman	$5..		55 00	
	" 446 ft. deck plank	4..		20 07	
	" 420 days carpenters & caulkers	$3..	1,260 00		
	" 23½ laborers	$2..	47 50		
					241 00
	" 1,126 ft. oak lumber on wheel-house.	4½..		50 67	
	" 100 lbs. spike " "	7..		10 50	
	" 19 " iron " "	6..		1 14	
	" 32 days' labor " "	$3..		96 00	
	" 2 knees, 10 inches " "	30..		3 00	
					161 31
					2,572 95

Detroit, June 28th, 1869. D. McCULLOM.

328 DETROIT, *Mich.*, *July 15th*, 1869.

W. S. Gardner, per steamer Dove, bought of D. A. Ross & Co.

June 14.	1,000 ft		35..	35 00		
	300 ft. 1×12–14			10 50		
	100 ft. 1½ clear-dssd		47..	4 70		
	100 ft. 1¼ " "		" ..	4 70		
	156 in. 1½ " "		40..	6 24		
	30 pcs. 2×2½		45..	3 65		
	100 f.ds. ceil'g		35..	3 50		
	100 " decking, 1 inch		35..	21 00		
15.	775 in. decking, long Norway		50..	31 00	120	29

S. B. EIGHTH OHIO.

June 14.	6,800 ft., ¾ ceil'g		35..	238 00		
	1,000 in 1½ clear-drssd, 2 sides		48..	48 00		
	100 in 2 in			28 60		
	990 in			43 20		
	450 in			21 60		
	500 in ¾		45..	22 50		
	1,200 in ⅜		30..	36 00		
	250 in 2×4 sole ch		30..	7 68		
	44 in 2×16, 2 clean		40..	1 76		
	214 in 1⅜ clear		48..	10 27		
23.	300 in comm. floor'g		26..	7 80		
	309 in 2×10 & 2×13		20..	6 18		
329	300 in box		37..	11 10		
	1 pr. 1¾ by 5–26					
	2 in 1¾–5–22–102		40..	4 08		
	10 in 3×4–10 arst. 100		30..	3 00		
	10 in 2×4–14 93		20..	1 86		
	300 ft. decking, inch		35..	10 50		
22.	180 in 2 in. clear-dssd. 2 sds		48..	8 64		
28.	430 in 2×¾			6 24		
	120 — 1¼			5 76		
	500 — 1¼			24 00	546	97
	Amt. carried for'd				667	26
	Amt. brot. for'd				667	26
June 28.	2 pcs. 4×4—16 } 12 in 2×4—16 }		16..	2 73		
	95 ft. 1½ clear-dssd. 2 sid's		48..	4 56		
29.	500 in ¾ ceiling, clear		35..	17 50		
	66 in 1½ 300 flr. 1¼		48..	17 57		
	200 in 1½ clear		30..	6 00		
30.	231 in 1½		48..	11 29		
	250 in 3¼		45..	11 25		
	250 in ½		30..	7 50		
July 2.	180 in 2		48..	8 64		
3.	200 in 1½		48..	9 60		
	32 in 2×4			1 63		
8.	222 in 6×6–7, selected		20..	4 44		
	150 in 1×12, clear-dssd		45..	6 75		

		64 in ½ in. clear	30..	1 94	
	14.	100 in 1×12–14, com	20..	2 00	
330		100 in., 11×4, clear	27..	4 70	
		48 in., 2×4—12 B. select	20..	96	
		Machine-work, as p'r bill		91 90	
					210 84
					878 10

. Received payment.

D. A. ROSS & CO.

[Stamp.]

331 (Folio 628) DETROIT, MICH., *2nd August*, 1869.

Steamer Dove to Campbell, Owen & Co. Dr.

July	28.	12 lbs. oakum		1 80
	29.	½ day team		1 25
	30.	Hauling machinery		3 00
	31.	Taking out & putting in walking-beam	20 00	
		" " " connecting-rod, piston, and cylinder-head	25 00	45 00
		5¾ day', laborers, hoisting and hauling machinery		15 25
				$66 30

Received payment.

CAMPBELL, OWEN & CO.

Correct.—J. A. Sloan.
[Stamp.]

332 River & Lake Shore Ste'm Bo't Co., bought of W. M. Dwight & Co.

1869.

Oct.	6.	152 ft. oak, @ 2½c	3 80	
"	"	Dewy Niddlewod bill, resawing	35	
		Cartage	50	
				$4 65

Received payment.

D. M. DWIGHT & CO.

Wm. M. Dwight; 465; p'ge 761.

DETROIT, *July* 27, 1869.

Steamer Dove bought of the Detroit Stove-Works.

June	26.	10 G't Republic	70	
		1 large boiler & steamer	11	
		1 ex. large, & small Rus. iron drip-pan (3 / 2.50)	5 50	
		16 pipe, 1s	2 00	
		1 elbow, extra, (Beroker)	75	89 25
		CR.		
		By 380 old iron Peacemaker stove 1¼c		4 72
				84 59

(Endorsed:) Detroit Stove-Works; 8450; page 277.

333 ST. CLAIR, MICH., *Jan'y 7th*, 1870.

Steamer Dove bot. of John S. Ayens.

Jan'y 7.	30 lbs. of spike	2 10
	2 gallons rye w'i'ke's	5 00
	1 two-gallons jug	30
		7 40

Received payment.

JOHN S. AYENS.

DETROIT, *Sep't 9th*, 1869.

Steamer Dove to D. Lester. Dr.

Lumber	11 00
Services rendered, as per statement of the insurance co	15 00
	26 00

Received payment.

D. LESTER.

[Stamp.]

334 DETROIT, *July 5*, 1869.

Steamboat Dove to John Quigley. Dr.

June 22.	To altering his pipe & socket for stove-pipe,	
	60 lbs. galv'z'd-iron pipe	18 00
	1 paper clout-nails	25
	Man & help, ¾ day's work	3 75
	7 globes in lantern	2 00
	Reef frames "	50
	9 new lamp-bottoms	2 80
		$28 10

Received payment.

JOHN QUIGLEY.

[Stamp.]

335 DETROIT, *June 17th*, 1871.

Bought of Jno. Boydell.

1869.			
June 18.	44 6/15 gas. R. oil	1.10	48 82
	5 gas. drying	1.50	7 50
	300 Fahnestock's lead	14 25	42 75
	6 gas. tuy'r's	65	3 90
23.	¼ " gas F. varnish		90
26.	16¼ putty	6	98
July 10.	25 lb red lead	16	4 00
	½ gal. asphalt		1 00
27.	100 lb Tahe lead		14 25
	5 gals. tuy'r's	65	3 25
	¼ " dryer		38
28.	3 7-0 brushes	2.50	7 50
	200 Tahe lead	14¼	28 50
	5 gas. R. oil	1.10	5 50
	½ " dryer		75

30.	½ gall. vermil	88	
	1 ℔ ch. yellow	35	
	2 ℔ bt. umber	60	
	3 penies	10	
	100 ℔ Fah. lead	14 25	
31.	½ G. vermil	88	
	Cartage	80	
			187 84

Rec'd payment.

JOHN BOYDELL.

AUG. 23, '69.
[Stamp.]

336 *Painter's time to July* 3, 1869, *Dove's collision.*

D. Dixon, 5½ d'ys, 24s	16 50	
David Dixon.		
Finister, 2 d'ys, 28s	5 50	
Jacob Finister.		
Geo. Culbert, 4 , 16s	8 00	
Geo. Culbert, p'r S.		
Tony Colbert, 5 d'y, 18s	11 25	
George Calbert, p'y.		
Stewart, 3 , 18s	6 75	
John Stewart.		
Kellogg, 3 , 16s	6 00	
Kellogg.		
C. Smith, 1 d'y, 18s	2 25	
Chas. Smith.		
		56 25

Dove collision.

D. Dixon, 5½, 27s	16 50	
David Dixon.		
Finister, 3½, 22s	9 62	
Jacob Finister.		
Tonney, 3¼, 18s	7 87	
Triecy Cavet, his + mark.		
Kelly, 1½	3 00	
F. Kellogg.		
C. Smith, 1½	3 38	
Chas. R. Smith.		
		40 37

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337 *Painters on Dove. July* 31, '69.

H. Leonard, 2 d'ys, 18s	4 50	
Henry Leonard.		
C. Shepard, ¾ d'ys, 18s	1 68	
Charlie Shepard.		
A. Culbert by 3¼ d'ys, 18s	7 31	
A. F. Culbert.		
W. Brooks by 2 d'ys, 18s	4 50	
W. Brooks.		
Blodgett	5 00	
Geo. Finister by 3¼ days, 18s	7 31	

Geo. Finister.
D. Dixon by 4 days..... 12 00.
David Dixon.

37 50

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338 DETROIT, *Sept.* 14, 1869.

Steamer Dove to David Dixon, DR.

1869.

Jan'y 26.	To 9 lights glass,	@	2s		$2 25	
	" 6	"	"	30c	1 80	
	" 6	"	"	" 40	2 40	
	" 4	"	"	20	80	
	" 1	"	"	1.00	1 00	
						8 25
July 13.	" 4	"	"	2s	1 00	
Aug. 7.	" 5	"	"	" 20c	1 00	
Sept. 11.	" 2	"	"	" 30c	60	
						10 85

Rec'd payment.

DAVID DIXON.

Carpenter's time on Dove ending June 19, '69, *paid June* 21, '69.

S. Hurd, 6 days, 20s..... 15 00
S. G. Hurd.
A. Hammond, 4 days, 20s..... 10 00
D. Hammond, his + mark.
M. Fenwen, 4 days, 20s..... 10 00
Mich'l Fenwen.
D. Sloan, 2¼ days, 20s..... 5 62
D. Sloan.
2¼ days, 20s..... 5 62
W. G. Venn. 46 24

(Page 220.)

339 RIVER & LAKE SHORE LINE OF STEAMERS,
No. 474. *Steamer Dove, June* 26, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay J. Westaway twenty-one & .65 dollars.
Given for collision a/c.
$21.65. W. H. REYAN, *Clerk.*

RIVER & LAKE SHORE LINE OF STEAMERS,
No. 243. *Steamer Dove, June* 26, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay A. H. Robinson three dollars.
Given for wheelsman.
$3.00. WM. H. REYAN, *Clerk.*

RIVER & LAKE SHORE LINE OF STEAMERS,
No. 478. *Steamer Dove, June* 26, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay A. Vineyard five dollars.
Given for collision a/c.
$5.00. WM. H. RYAN, *Clerk.*

RIVER & LAKE SHORE LINE OF STEAMERS,
No. 473. *Steamer Dove, June* 26, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay Jack Weber nine .13 dollars.
340 Given for collision a/c.
$9.13. WM. H. RYAN, *Clerk.*

Dove collision a/c, Dr., to D. McCollum.

June 12 to June 26th. 12⅓ days, $3.50 ..... $43 75
D. McCOLLUM.

Carpenter's time on Dove collision ac., ending June 26.

S. G. Hurd, 6 days, 20s	15 00
M. Finnall, 6 " 20s	15 00
A. Hammon, 6 " 20s	15 00
J. W. Walter, ½ d'ys, 20s	1 25
Geo. Kean. 1 d'y, 20s	2 50
Sloan, 6, 20s	15 00
W. Venn, 6 d'ys, 20s	15 00
	78 75

Wm. C. Venn.
(Page 228.)

341 Steamer Dove to Mrs. Buchanan.

June 20. To boarding men belonging to steamer, 213 meals, @ 30 ..... $63 90
6 90
$57 00

Spring Wells, June 26th, 1869.
Rec'd payment.
MRS. BUCHANAN,
P'r BELMAN.

JO. WHITE, *Steward.*
(Page 230.)
[Stamp.]

STEAMER DOVE, *June 26th*, 1869.
To paid Joseph Grant for boarding crew $10 00
Correct.—Jo. White, steward.
(Page 269.)

RIVER & LAKE SHORE LINE OF STEAMERS,
No. 466. *Steamer Dove, July* 3, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay Jo. White twenty-five & .81 dollars.
Given for coll. a/c.
W. H. RYAN, *Clerk.*
$25.81.

342 RIVER AND LAKE SHORE LINE OF STEAMERS,
No. 467. *Steamer Dove, July* 1, 1869.

S. Gardner, Ward's wharf: Please pay S. McDowell thirty-three dollars.
Given for coll. ac.
$33.

W. H. RYAN, *Clerk.*

RIVER AND LAKE SHORE LINE OF STEAMERS
No. 469. *Steamer Dove, July* 1, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay George Brown thirty-three dollars.
Given for D. & coll.
$33.

W. H. RYAN, *Clerk.*

RIVER AND LAKE SHORE LINE OF STEAMERS,
No. 468. *Steamer Dove, July* 1, 1869.

Please pay J. Pain thirty-three dollars.
Given for D. H. & coll.
$33.

W. H. RYAN, *Clerk.*

343 RIVER AND LAKE SHORE LINE OF STEAMERS,
No. 475. *Steamer Dove, June* 29, 1869.

S. Gardner, Ward's wharf, Detroit: Please pay John Isaac two dollars.
Given for coll. ac.
$2.00.

W. H. RYAN, *Clerk.*

RIVER AND LAKE SHORE LINE OF STEAMERS,
No. 470. *Steamer Dove, July* 1, 1869.

Please pay D. Mitchell three dollars.
Given for D. H. & coll.
$3.00.

W. H. RYAN, *Clerk.*

OFFICE OF THE RIVER & LAKE SHORE STEAMBOAT LINE,
Detroit, Mich., July 21, 1869.

Rec'd for two days' services, $2 per day, 4.00.

HENRY CAMPBELL.

DETROIT, *Oct.* 6, '69.

1869. Steamer Dove to Mrs. Buchanan.

For 13 meals, 35, 4.55.
Correct.—J. A. Sloan.
Rec'd pay't.

MRS. BUCHANAN.

344 RIVER & LAKE SHORE LINE OF STEAMERS,
No. —. *Steamer Dove, June* 26, 1869.

D. Gallagher, Marine City: Please pay Ed. Bell, 8½ days, twelve .75 dollars, for services in full at dry-dock.
$12.75.

L. A. JERKES, *Clerk.*

RIVER & LAKE SHORE LINE OF STEAMERS,
No. —. Steamer Dove, July 2, 1869.

D. Gallagher, Marine City: Please pay John Willis five .43 dollars, for services on Dove while in dock.
$5.43.

L. A. JERKES, *Clerk.*

DETROIT, *June* 1, 1870.

Received of the River & Lake Shore Steamboat Line one hundred and forty-seven $\frac{53}{100}$ dollars, damages on merchandise by collision of Dove & Mayflower.
June, 1869.
$147.53.

H. WHITING & SONS.

[Stamp.]

345 St'r Dove D. to G. McGowan.

To 5½ tobacco, 4s, aw'd time of collision 2.75

PT. HURON, *Oct.* 27, '69.

Would have remitted sooner, but it takes time to get to these matters.

Rece'd pay. G. McGOWEN.

NOV. 1.

(Page 392.)

(441) Steamboat Dove in ac. with Moss & Mills, DR.

For damages sustained in goods shipped by them from Detroit to Lexington, on or about the 31st of May, 1869, on the trip at the time of the collision with the propeller Mayflower, as follows:

2 bbls. crackers totally lost, 98 lb', cost 7½c	7 85
2 " " wet entirely through & worthless	7 85
1 cheese, lost, 32 lb., 19c	6 08
2 cases bitters, cost $6 ea	12 00
	33 78

CR.

By cash rec'd of Mr. G. Goodwin, for a portion of the above cheese recovered	3 75
	$30 03
Interest on the same from the time of the collision, say	1 97
	32 00

346 We, Moss & Mills, of Davisville, Mich., do hereby certify that we have sustained the damages above stated, & that the above is a correct statement of our claim.
Dated March 17, '71.

MOSS & MILLS,
Per favor MOSS.

DETROIT, *Feb'y 15th*, 1870.

Messrs. G. B. Ward & Co.:

Oct. 2. To damages on wire work consigned to Rev. Eban Lannie, Port Huron $5 00

Received pay.

WM. SNOW.

DETROIT, *June*, 1869.

Steamer Dove to John Bloom, D.

To 2nd-hand sail $22 50
Less $5.00 paid by ins. co 5 00

17 00

Rec'd payment.

JOHN BLOOM,
J. B., JR.

DETROIT, *Mar.* 14, 1870.

347 DETROIT, *July 21st*, 1871.

Mr. A. Bedford, bought of Babillon, Hinchman & Co.

1869.
May 31. 2 bbls. L. plaster, 1.80 ..... 3 60

Rec'd pay.

BABILLON, HINCHMAN & CO.

(Duplicate.)

348 District court of the United States for the eastern district of Michigan.

RIVER & LAKE SHORE STEAMBOAT LINE *vs.* PROPELLER MAYFLOWER. } In admiralty.

And now cometh the said libellant, by Newb., Pond & Brown, its proctors, and excepts to the report of the commissioner to whom it was referred to assess the libellants' damages in said cause, for the following reasons:

1. Because he disallowed the bill of Campbell & Owen for lining up the engine.
2. Because he disallowed the sum of $100, paid Jos. Nicholson.
3. Because he reduced the claim for services of steamer Ohio to $100 per day.

NEWB., POND & BROWN.
Libellts.' Proctors.

Filed February 12, 1872.

D. J. DAVISON, *Clerk.*

349

350 The United States district court for the eastern district of Michigan.

THE RIVER & LAKE SHORE STEAMBOAT LINE, owners of the steamboat Dove, *vs.* THE PROPELLER MAYFLOWER. } In admiralty.

The respondent in this cause hereby excepts to the report of the commissioner made & by him filed herein on this day of February, 1872,

for the following causes; that is to say he excepts to the allowance of the following items, as damages to the libellants, viz:

1st. John P. Clark bill, voucher C	$25 00
2. N. M. Dwight & Co.'s bill, voucher F	4 65
3. D. Lester's bill, voucher I	26 00
4. So much of John Boydell's bill, voucher K, as was furnished & charged after July 26th, '69	83 09
5. Painter's bill, voucher N	37 30
6. Mrs. Buchanan's bill, voucher W	4 55
7. G. Smith's bill for lumber	29 04
8th. Damage to cornice, head-lines, frescoes	300 00
9. Demurrage 28 days at $100	2,800 00
10. Henry Campbell's bill, voucher V	4 00
11. Value of services of 8th Ohio	1,100 00
12. 28 days' wages of officers & crew	530 00
13. Interest from July 30th, 1869, to Feb. 5th, 1872	2,200 00
14. D. McCullom's bill, voucher C	43 00

F. H. CANFIELD,
Respondent's Proctor.

Dated February 8, 1872.
Filed February 13, 1872.

D. J. DAVISON,
D. Clerk.

351

352 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district-court room in Detroit, on Monday, the twenty-ninth day of April, in the year of our Lord one thousand and seventy-two. Present the honorable John W. Longyear, district judge.

THE RIVER & LAKE SHORE STEAMBOAT LINE *vs.* THE PROPELLER MAYFLOWER, HER ENGINE, &c. } In admiralty, on a libel for collision.

On reading and filing the report of Wm. D. Wilkins, United States commissioner, to whom it was referred to assess & report the damages sustained by libellant in the said cause, and by which there is reported due to the libellant for its said damages the sum of fifteen thousand five hundred and four dollars and thirty-four cents, ($15,504.34;) and on reading and filing the exceptions of libellant & claimant, and on hearing the arguments of the respective parties, it is ordered that the exceptions of the libellant thereto be, and the same are hereby, overruled.

And it is further ordered that the exceptions filed to the said report by the claimant in the said cause, the first, second, third, sixth, seventh, and eighth, be, and the same are hereby, sustained; that the ninth be sustained to the amount of five hundred dollars only; that the twelfth be sustained to the amount of two hundred and ninety-two dol-
353 lars and fifty cents only; and that the thirteenth be sustained to the amount of two hundred and seven dollars and ninety-eight cents only; and that the residue of the said exceptions be, and the same are hereby, overruled. And it is further ordered, adjudged, and decreed that the said libellant recover of the claimant in this cause the sum of fifteen thousand one hundred and fourteen dollars and sixty-two cents, ($14,114.62,) with interest thereon from February 5th, 1872, the

date of the said report, together with its costs to be taxed; and it is further ordered that the claimant recover of the libellant his costs upon the exceptions to the said report. And it appearing that the said propeller has been duly bonded by H. Norton Strong, as claimant thereof, with Nathaniel W. Brooks as surety by their bond or stipulation, in the sum of thirty-seven thousand one hundred dollars, condition' to abide the decree of this court in this cause and to pay the award thereof, and assenting *that*, unless they should do so, that exception should issue against them therefor. On motion of Newbury, Pond, and Brown, libellant's proctors, it is further ordered, adjudged, and decreed that judgment be, and the same is hereby, entered against the said H. Norton Strong, principal, and Nathaniel W. Brooks, surety, as aforesaid, for the aforesaid sum of fourteen thousand one hundred and fourteen dollars and sixty-two cents, ($14,114.62,) with interest and cost as aforesaid. And it is further ordered that unless the said damages & costs shall be paid into the registry of this court within ten days from this date, execution do issue against the said principal and surety in the said
354 bond or stipulation in due form therefor.
355
356 The district court of the United States for the eastern district of Michigan.

THE RIVER AND LAKE SHORE STEAMBOAT Line
vs.
THE PROPELLER MAYFLOWER, HER ENgines, &c., H. Norton Strong, owner. } In admiralty.

The said H. Norton Strong, claimant and owner of the said propeller Mayflower, her engines, &c, feeling himself ag'rieved by the final decree of the district court in the above-entitled cause, hereby appeals therefrom, and from the whole thereof to the circuit court of the United States for the eastern district of Michigan, and he hereby gives notice that he will upon said appeal make new proofs under each allegation of the libel and answer filed in said cause.

H. NORTON STRONG,
By F. H. CANFIELD,

F. H. CANFIELD,
Proctor for Respondent.
G. & N. LOTHROP,
Of Counsel.

I hereby accept service of this notice.

NEWB., POND & BROWN.

9 MAY, 1872.

Filed May 9th, 1872.

D. J. DAVISON,
Clerk.

357
358 The district court of the United States for the eastern district of Michigan, in admiralty.

Whereas an appeal has been taken from the decree of this court, made on the twenty-ninth day of April, A. D. 1872, in a certain cause wherein the River and Lake Shore Steamboat Line is libellant, against the Propeller Mayflower, her engines, &c., and H. Norton Strong, claimant, by the said claimant to the circuit court of the United States for the eastern district of Michigan:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of twenty-five thousand dollars to pay all damages & costs which shall be awarded against the said appellant by the final decree rendered by the said circuit court.

H. N. STRONG.
N. W. BROOKS.

Taken & acknowledged this 13 day of May, A. D. 1872, before me.

D. J. DAVISON,
U. S. Commissioner, East. Dist. Mich.

359 EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally, Nathaniel W. Brooks, of the city of Detroit, Wayne County, Michigan, and made oath that he is worth the sum of fifty thousand dollars, of lawful money of the United States of America, after payment of his just debts in real estate, subject to execution within the eastern district of Michigan.

N. W. BROOKS.

On the 13th day of May, A. D. 1872, the said Nathaniel W. Brooks was sworn to the truth of the above attes'tion, before me.

D. J. DAVISON,
U. S. Comm. East. Dist. Mich.

Filed May 13th, 1872.

D. J. DAVISON, *Clerk.*

360 DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

I, Darius J. Davison, clerk of said court, do hereby certify the above and foregoing document on record to be the record in appeal in said court, in the case of the River & Lake Shore Steamboat Line, owners of the steamer Dove, libellant & respondent, against the Propeller Mayflower, her engine, machinery, boats, &c., H. Norton Strong, claimant and appellant, being the original process, pleadings, and bond, the depositions read on the hearing, the commission's report under reference, and the depositions taken thereunder, and the exceptions to said report, and true copies of all interlocutory and final orders and decrees of the district court in said cause.

Witness my hand and seal of said court at Detroit, Michigan, on this first day of May, A. D. 1872.

[SEAL.] D. J. DAVISON,
Clerk U. S. District Court for the Eastern District of Michigan.

Transcript on appeal, filed in the office of the clerk of the circuit court of the United States for the eastern district of Michigan.

A. MANDELL, *Clerk.*

MAY 1, 1872.

361

362 Note of issue for June term, 1872.

STATE OF MICHIGAN:

In the U. S. circuit court for the eastern district of Michigan.

RIVER AND LAKE SHORE STEAMBOAT LINE }
vs.
PROP. MAYFLOWER. }

MAY 21, 1872.

The above-entitled cause will be brought on for trial at the next term

of this court, notice having been served on the part of the libellant on F. H. Canfield, claimant's attorney, for the according to the statute and rules of this court. You will please place said cause on the issue-docket of this court for said term.

NEWB., POND & BROWN,
Proctors for Libellant.

To the clerk of said court.

Filed in clerk's office May 21, 1872.

A. MANDELL, *Clerk.*

363 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Tuesday, the eleventh day of June, in the year of our Lord one thousand eight hundred and seventy-two. Present honorable Halmer H. Emmons, circuit judge.

THE RIVER AND LAKE SHORE STEAMBOAT LINE, owners of steamboat Dove, libellant & appellant,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &c. H. Norton Strong, claimant & appellant.
} On appeal from district court.

And now comes the said claimant and appellant, by Mr. Lothrop and Mr. Canfield, his counsel, and moves the court for the continuance of this cause, which motion is argued by Mr. Lothrop and Mr. Canfield in support thereof, and by Mr. Newberry and Mr. Brown in opposition, and the same having been duly considered, is now granted by the court upon the condition that the appellant give to the counsel for said appellee, within thirty days from this date, the names of the witnesses he intends to examine and the facts to be proven by the same.

364 October 21, 1872.—Note of issue for November term, 1872, filed by appellee:

The circuit court of the United States for the eastern district of Michigan.

THE RIVER AND LAKE SHORE STEAMBOAT LINE
vs.
PROP. MAYFLOWER.
} In admiralty.

SIR: You will please take notice that on Monday the ninth day of December, instant, on the opening of the court on the morning of said day, or as soon thereafter as counsel can be heard, and if said court shall not be in session, before the honorable Hulmer H. Emmons, circuit judge, upon that day, then upon the next day of its session thereafter, we shall ask the leave of the said court to file a supplementary libel in the above-entitled cause, of which the annexed is a true copy.

Dec. 4, 1872.

NEWB., POND & BROWN,
Libellant's Proctors.

To F. H. CANFIELD, Esq.,
Claimant's Proctor.

365

366 To the judge of the circuit court of the United States for the eastern district of Michigan, in admiralty:

The supplemental libel of the River and Lake Shore Steamboat Line, a corporation existing under and by virtue of the laws of this State,

against the propeller Mayflower, her boats, tackle, apparel, and furniture, and H. N. Strong, claimant of said propeller, alleges and propounds as follows:

1st. That on the 17th day of June, A. D. 1869, your libellant filed his libel in the district court of the United States for the aforesaid district, against the said propeller Mayflower, her boats, tackle, apparel, and furniture, claiming the sum of eighteen thousand five hundred and fifty dollars ($18,550) damages to the steamboat Dove, of which your libellant was then the owner, by reason of a collision between the said steamboat and the said propeller Mayflower, on the 31st day of May, 1869, alleging in said libel, amongst other things, that the said collision was occasioned solely by the negligence, unskillfulness, and carelessness of the
367 parties navigating the Mayflower, and praying, amongst other things, that the said propeller Mayflower might be condemned and sold to pay your libellant's said claim.

2ed. That afterwards, to wit, on the 22ed day of June, A. D. 1869, the above-named H. Norton Strong filed his claim and answer to the said libel, claiming to be the true and bona-fide owner of said propeller Mayflower, and alleging, amongst other things, that the said collision was occasioned solely by the fault of the officers and crew of the steamboat Dove, and praying that the said libel might be dismissed with costs.

3nd. That such proceedings were thereupon had that afterwards, to wit, on the 26th day of April, A. D. 1870, the said cause came on to be heard before the judge of the district court upon the depositions and proofs taken in the said cause, and the aforesaid judge, having accordingly advised thereon, on the seventh day of March, A. D. 1871, made a decree or sentence in the said cause whereby it was, amongst other things, ordered and decreed that the said propeller Mayflower, her officers and crew, were solely in fault for the said collision, and your
368 libellant was awarded its damages and costs; and it was thereon referred to a commissioner to compute and estimate the same; that upon the report of said commissioner a final decree was entered in the said cause on the twenty-ninth day of April, A. D. 1872, for 14,114$\frac{67}{100}$ dollars, from which said decree the said H. Norton Strong thereafter appealed, and the said cause is now ready for hearing in this court upon the said libel to which it is supplementary.

4th. That upon the 22ed day of June, 1869, the said H. Norton Strong, who was then the owner of the said propeller Mayflower, filed his said libel in the said district court against the said steamboat Dove, claiming damages in the sum of nineteen thousand dollars, by reason of the same identical collision between the said steamboat Dove and the said propeller Mayflower, alleging, amongst other things, that the said collision was occasioned solely by the unskillfulness, carelessness, and negligence of the officers and crew of the said steamer Dove, and praying, amongst other things, that the said steamboat Dove might be
369 condemned and sold to pay the said damages.

5th. That afterwards, to wit, on the third day of September, A. D. 1869, your libellant filed its answer to the said libel, claiming to be the owner of the steamboat Dove, alleging the said collision to have been occasioned solely by the negligence and fault of the officers of the said propeller Mayflower, and praying that the said libel might be dismissed with costs. That such proceedings were thereupon had that said cause came on to be heard before the Hon. John W. Longyear, judge of the said district court, upon depositions and proofs taken in said cause, and the said judge, having duly advised thereon, on the seventh day of March, A. D. 1871, made a decree or sentence in said

cause whereby it was, amongst other things, adjudged and decreed that the said propeller Mayflower was solely in fault for the said collision, and the libel of the said H. Norton Strong was dismissed with costs.

6th. That the said decree or sentence of the said district court in the said cause of said H. Norton Strong against the steamboat Dove
370 remains in full force and effect, unreversed and unrepealed, and your libellant further claims that the said H. Norton Strong is estopped thereby from denying that the said collision was occasioned solely by the negligence and fault of the officers and crew of the said steamboat Dove.

7th. Wherefore your libellants pray that the said H. Norton Strong may be cited to answer the premises, and that the decree of the district court in this cause may be affirmed with costs, and for such other relief as it may be entitled to receive.

(Signed) River & Lake Shore Steamboat Line,
By S. GARDNER,
President.

EASTERN DISTRICT OF MICHIGAN, *ss:*

On the 4th day of December, A. D. 1872, before me personally appeared the above-named Solomon Gardner, president of the above-named River and Lake Shore Line, and made oath that he had heard read the foregoing libel, and that he knows the contents thereof, and the same are true.

(Signed) RALZEMOND A. PARKER,
Notary Public, Oakland Co., Michigan.

Filed in clerk's office Dec. 10, 1872.

A. MANDELL, *Clerk.*

371

372 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment on Monday, the ninth day of December, in the year one thousand eight hundred and seventy-two; present, honorable Holmer H. Emmons, circuit judge.

THE RIVER AND LAKE SHORE STEAMBOAT Line, owners of Steamer Dove, libellants & appellees,
vs.
THE PROPELLER MAYFLOWER, HER ENGINES, &c., H. Norton Strong, claimant and appellant.

On appeal from district court of the United States for the eastern district of Michigan, in admiralty.

This cause, coming on to be heard on motion of libellants for leave to file a supplemental libel in this cause, is argued in part by Mr. Brown, in behalf of said appellees, and by Mr. Canfield, in behalf of said appellant, and continued for further hearing.

373 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Tuesday,

the tenth day of December, in the year one thousand eight hundred and seventy-two: present, honorable Holmer H. Emmons, circuit judge.

THE RIVER AND LAKE SHORE STEAMBOAT Line, owners of Steamer Dove, libellants & appellees,
vs.
THE PROPELLER MAYFLOWER, HER ENGINES, &c., H. Norton Strong, claimant and appellant.

On appeal from U. S. district court, in admiralty.

This cause, again coming on to be heard upon motion of libellants for leave to file a supplemental libel in this cause, and the arguments of counsel having been concluded, and full consideration being thereupon had, it is ordered that leave be, and the same is hereby, granted to said libellants and appellees to file a supplemental libel in this cause, and that said appellants have two days in which to file answer thereto.

And it is further ordered that the clerk of said district court forthwith certify and return to this court under the appeal taken in this cause, and as part of the record of appeal, the record and proceedings on the cross-libel in case of H. Norton Strong against the steamer Dove and her engine, boats, &c., &', John A. Sloan, master, in said district court in admiralty, being numbered 1239.

374 The circuit court of the United States for the eastern district of Michigan, in admiralty.

THE RIVER & LAKE SHORE STEAMBOAT LINE
vs.
THE PROPELLER MAYFLOWER AND H. NORTON STRONG, claimants.

And now comes the said libellants, by Newb., Pond & Brown, their proctors, and move the said court for leave to file the annexed as a supplemental libel in the said cause.

Dec. 9, 1872.

(Signed) NEWB., POND & BROWN,
Libell'ts' Proctors.

Filed in open court Dec. 9th, 1872.

A. MANDELL,
Clerk.

To the judge of the circuit court of the United States for the eastern district of Michigan, in admiralty:

The supplemental libel of the River and Lake Shore Steamboat Line, a corporation existing under and by virtue of the law of this State, against the propeller Mayflower, her boats, tackle, apparel, and
375 furniture, and H. Norton Strong, claimant of said propeller, alleges and propounds as follows:

1st. That on the 17th day of June, A. D. 1869, your libellant filed its libel in the district court of the United States for the aforesaid district against the said propeller Mayflower, her boats, tackle, apparel, and furniture, claiming the sum of eighteen thousand five hundred and fifty dollars ($18,550) damages to the steamboat Dove, of which your libellant was then the owner, by reason of a collision between the said steamboat and the said propeller Mayflower on the 31st day of May, 1869,

alleging in said libel, amongst other things, that the said collision was occasioned solely by the negligence, unskillfulnes, and carelessness of the parties navigating the Mayflower, and praying, amongst other things, that the said propeller Mayflower might be condemned and sold to pay your libellants said claim.

2nd. That afterwards, to wit, on the 22nd day of June, A. D. 1869, the above-named H. Norton Strong filed his claim and answer to the said libel, claiming to be the true and bona fide owner of said pro-
376 peller Mayflower, and alleging, amongst other things, that the said collision was occasioned solely by the fault of the officers and crew of the steamboat Dove, and praying that the said libel might be dismissed with costs.

3rd. That such proceedings were thereupon had that afterwards, to wit, on the 26th day of April, A. D. 1870, the said cause came on to be heard before the judge of the district court upon the depositions and proofs taken in the said cause, and the aforesaid judge, having accordingly advised thereon, on the seventh day of March, A. D. 1871, made a decree or sentence in the said cause, whereby it was, amongst other things, ordered and decreed that the said propeller Mayflower, her officers and crew, were solely in fault for the said collision, and your libellant was awarded its damages and costs, and it was thereon referred to a commissioner to compute and estimate the same. That upon the report of said commissioner a final decree was entered in the said cause on the twenty-ninth day of April, A. D. 1872, for $14{,}114\frac{67}{100}$ dollars, from which said decree the said H. Norton Strong thereafter appealed,
377 and the said cause is now ready for hearing in this court upon the said libel to which it is supplementary.

4th. That upon the 22nd day of June, 1869, the said H. Norton Strong, who was then the owner of the said propeller Mayflower, filed his libel in the said district court against the said steamboat Dove, claiming damages in the sum of nineteen thousand dollars by reason of the same identical collision between the said steamboat Dove and the said propeller Mayflower, alleging, amongst other things, that the said collision was occasioned solely by the unskillfulness, carelessness, and negligence of the officers and crew of the said steamer Dove, and praying, amongst other things, that the said steamboat Dove might be condemned and sold to pay the said damages.

5th. That afterwards, to wit, on the third day of September, A. D. 1869, your libellant filed its answer to the said libel, claiming to be the owner of the steamboat Dove, alleging the said collision to have been occasioned solely by the negligence and fault of the officers of the said propeller Mayflower, and praying that said libel might be dismissed with costs. That such proceedings were thereupon had that said
378 cause came on to be heard before the hon'ble John W. Longyear, judge of the said district court, upon depositions and proofs taken in said cause, and the said judge, having duly advised thereon, on the seventh day of March, A. D. 1871, made a decree or sentence in said cause, whereby it was, amongst other things, adjudged and decreed that the said propeller Mayflower was solely in fault for the said collision, and the libel of the said H. Norton Strong was dismissed with costs.

6th. That the said decree or sentence of the said district court in the said cause of said H. Norton Strong against the steamboat Dove remains in full force and effect, unreversed and unaffected, and your libellant further claims that the said H. Norton Strong is estopped thereby from denying that the said collision was occasioned solely by the negligence and fault of the officers and crew of the said steamboat Dove.

7th. Wherefore your libellants pray that the said H. Norton Strong may be cited to answer the premises, and that the decree of the
379 district court in this cause may be affirmed with costs, and for such other relief as it may be entitled to receive.

(Signed) River & Lake Shore Steamboat Line.
L. GARDNER, *Pres.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 4th day of Dec., A. D. 1872, before me personally appeared the above-named Solomon Gardiner, president of the above-named River and Lake Shore Line, and made oath that he had heard read the foregoing libel, and that he knows the contents thereof, and that the same are true.

(Signed) RALZEMOND A. PARKER,
Notary Public Oakland Co., Michigan.

Filed in open court Dec. 9th, 1872.
(Signed) A. MANDELL, *Clerk.*

380 To the judge of the district court of the United States for the eastern district of Michigan, in admiralty:

The libel of H. Norton Strong, of Detroit, against the steamer Dove, whereof John A. Sloan lately was master, her boats, tackle, apparel, and furniture, and against John A. Sloan, master of said steamer Dove at the time of the collision hereinafter described, and against all persons lawfully intervening for their interest therein in a cause of collision, civil and maritime. And thereupon said libellant doth allege and propound as follows, to wit:

First. That your libellant, when the cause of action hereinafter stated arose, was the owner of the steam-propeller Mayflower, which said Mayflower, as well as the aforesaid steamer Dove, were vessels of twenty tons burthen, and upwards, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories upon the lakes and navigable waters connecting said lakes, within the true mean-
381 ing and intent of the act of Congress.

Second. That on the 31st day of May, 1869, the said Mayflower, being then and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and necessary complement of officers and men, stationed at the proper posts and upon the look out for the protection and safety of said vessel, and with her proper and usual signal-lights properly displayed and brightly burning, was bound on a voyage from Chicago to Buffalo, laden with a valuable cargo of about fifteen thousand bushels of corn and eighteen hundred barrels of flour; and about eleven o'clock p. m. of said day was proceeding down the St. Clair River; that said propeller was moving at a moderate speed under check from the time of entering the river, because the night was somewhat foggy, although both shores were visible from said propeller, and that said propeller sounded fog-signals as required by law at the proper intervals; that about said hour, and when about two miles above Marine City, said propeller was passing down along the Canadian shore, because her master, Captain Woodworth, was intending to round to and stop at said Marine City, where he lived, and about said hour the persons navigating said Mayflower heard a steam-
382 whistle ahead, on her starboard hand, in the direction of the

American shore, and immediately replied, sounding two whistles, according to the rules of navigation; that an answer of two whistles was received from the approaching steamboat, and that thereupon a succession of from four to six whistles, of two blasts back and forth, ensued; that the bright light of an approaching steamboat soon became visible, although no colored lights were then or thereafter perceptible except as hereinafter next stated; that shortly after the hull of said approaching steamboat was discovered about four points off the Mayflower starboard bow, showing her red light, and said approaching steamboat (which was said steamer Dove) swung to starboard, heading rapidly nearly at right angles across the bows of said Mayflower, with her helm apparently hard aport; that in consequence of such gross mismanagement on the part of said Dove, although the said Mayflower, which, as above stated, had been constantly under check since entering the river, immediately rang her bell, stopped, and commenced backing, the said Dove collided with said Mayflower, the stem of the lat-
383 ter striking the Dove on her port bow about eight feet abaft her stem; that the location of the collision was within a few hundred feet of the Canada bank, and near shoal water, which said Dove succeeded in immediat'ly reaching, and then and there sank.

Third. That said collission resulted solely from gross carelessness and neglect of the rules of law on the part of said steamer Dove, in the following particulars:

1. The said Dove ascending the river on the American side and the said Mayflower descending on the Canadian side, and the said Dove having notified said Mayflower by the proper signal-whistle of the said Dove's decision to keep the American shore and to pass to port on the Mayflower starboard hand, the said Dove did nevertheless attempt to pass to starboard on the Mayflower's port hand, and thereby passed directly across the bows of the Mayflower and towards the Canadian shore, as sufficiently appears from the fact that she sank on that shore.

2. The Dove not meeting the Mayflower end on, or nearly so, was bound to pass her on her, said Dove's, port hand, whereas she at-
384 tempted to pass said Mayflower on her, the said Dove's, starboard hand, as sufficiently appears from the fact that the said Dove received the blow on her port bow; the unlawful attempt of her said master to pass the starboard bringing her directly across the bows of said Mayflower, and making said collision inevitable in spite of every effort on the part of the latter.

3. The said Dove did not keep her ascending course, which was parallel to the descending course of said Mayflower, nor rung her bell, nor stop, nor back, nor adopt any precaution to avoid said collision.

4. The said Dove had no colored lights properly trimmed and burning.

5. The said Dove carried an incompetent and insufficient complement of officers and crew, not properly stationed, and not carefully attending to their duties.

6. The said Dove had no proper lookout forward.

Four. That by reason of said collision the said libellant claims that he both suffered damage in respect of said Mayflower to the amount of $19,000 in necessary repairs, injuries to cargo, demurrage, and
385 other damages, for which sum the libellant asserts a lien on said Dove and a demand on her master enforc'able in this court.

Fifth. That the aforesaid collision and damage was occasioned solely by the negligence, unskillfulness, and carelessness of the persons navigating the said steamer Dove, and not by or through any fault, negli-

gence, or improper conduct on the part of your libellants, said vessel, her master, or crew.

Sixth. That all and singular the premises are true, and that the said steamer Dove is now lying at the port of Detroit, and is within the admiralty jurisdiction of the admiralty court.

Wherefore your libellant prays that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamer Dove, her boats, tackle, apparel, and furniture; and that admiralty process in the nature of a summons may issue for the citation of said master, John A. Sloan; and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid; and that
386 this honorable court will be pleased to decree the payment of the damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same; and that a personal decree for the payment of the same may be pronounced against the said master, John A. Sloan, and enforced against him by proper final process, and that your libellant may have such other and further relief as in law and justice they are entitled to receive.

H. N. STRONG, *Libellant.*

ALFRED RUSSEL,
Proctor, and of Counsel for Libellant.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Be it remembered that on this day of June, A. D. 1869, before me, at Detroit, Michigan, personally appeared the within-named H. Norton Strong, owner of the said steam-propeller Mayflower, and made solemn oath that he has heard read the foregoing libel, and knows the contents thereof, and that the same is true as to his own knowl-
387 edge except as to those matters and things stated to be on information and belief, and as to these matters and things he believes it to be true.

WM. D. WILKINS,
U. States Commissioner for the Eastern District of Michigan.

Filed June 22nd, 1869.

WM. D. WILKINS, *Dep. Clerk.*

388 *Citation.*

District court of the United States for the eastern district of Michigan, ss

The President of the United States to the marshall of the eastern dis-
[SEAL.] trict of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United States of America for the eastern district of Michigan, on the twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by H. Norton Strong, owner of the propeller Mayflower, libellant, against the steamer Dove & her engine & machinery, boats, tackle, apparel, and furniture, and against John A. Sloan, her master, said libellant claiming that there is due him, for damages sustained by reason of the collision of said steamer with said propeller in St. Clair River, on May 31st, 1869, in repairs, injuries to cargo, demurrage, & other damages, the sum of nineteen thousand dollars, ($19,000;)
389 wherefore he brings suit in a certain action of collision, civil and

maritime, for the condemnation and sale of the same for the causes in the said libel alleged by the said libellant.

Now, therefore, we do empower and strictly command you, the said marshall, that you cite and admonish John A. Sloan, now or late master of said steamer Dove, if he shall be found in your district, to be and appear in said district court of the United States for the east district of Michigan, at the district court-room in the city of Detroit, on the first Tuesday of August next ensuing, then and there to answer the said libel and to make his allegations on that behalf; and also that you give public notice of the filing of said libel and the issuing of the attachment and citation therein, by publication twice in each week, for two weeks successively, in the Detroit Daily Free Press, a newspaper printed and published in the said city of Detroit, and by posting the said notice on the
390 outer door of the building occupied by this court. And have you at the said district court-room, in the said city of Detroit, on the first Tuesday of August next ensuing, this writ, with your doings in virtue thereof.

Witness the honorable Ross Wilkins, judge of the district court of the United States for the E. district of Michigan, at the city of Detroit, in the said district, this twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

JNO. WINDER,
Clerk,
By WM. D. WILKINS,
Dep. Clerk.

Filed June 23d, 1869.

WM. D. WILKINS,
Dp. Clerk.

I do hereby accept service of the within citation, June 23d, 1869.
(S'g'd) JOHN A. SLOAN,
Per S. GARDNER.

391
392 DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

The President of the United States of America to the marshal of the eastern district of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United States for the eastern district of Michigan, on the 22d day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by H. Norton Strong, owner of the propeller Mayflower, libellant against the steamer Dove, & her engine, boats, &c., claiming that there is due him for damages sustained by said propeller on occasion of her being run into by said steamer in St. Clair River, on May 31, 1869, the sum of nineteen thousand dollars, ($19,000.00,) for the reasons and causes in the said libel alleged and mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, etc., may be cited in general and special to answer the premises, and that all proceedings being had, that the said steamer or vessel, her tackle, etc., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libel'ant:

You are therefore hereby commanded to attach the said steamer Dove,

or vessel, her boats, tackle, etc., and to detain the same in your custody until the further order of the said court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel; and that they be and appear before the said court, to be held in and for the eastern district of Michigan, on the first Tuesday of August next, at ten o'clock of the forenoon of the same day, if the same shall be a day of jurisdiction; otherwise, on the next day of jurisdiction thereafter; then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Ross Wilkins, judge of the district court of the United States for the eastern district of Michigan, at the district court room in the city of Detroit, in the said district, this twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

JNO. WINDER,
Clerk,
By WM. D. WILKINS,
Dep. Clerk.

393 EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that, by virtue of the within writ, I did, on the 24th day of June, A. D. 1869, seize the within-named steamer Dove, her engine, boats, tackle, apparel, and furniture, and now have the same in my custody to await the further order of the court in the premises.

JOSEPH R. BENNET,
Marshal,
By T. W. RAY, *Deputy.*

Service, 2.00; miles, 6—$2.06.
Paid for tug in making seizure, ; ship-keeper on board, from , at $ per day.

(Indorsed:) No. , district court of the United States for the eastern district of Michigan, in admiralty. Attachment. H. Norton Strong, owner of the propeller Mayflower, vs. The steamer Dove, her engine, machinery, boats, &c. Returnable 1 Tuesday of August, 1869. Returned and filed , 187 . , clerk. Alfred Russell, libel'ant's proctor.

394 In admiralty.

DISTRICT COURT OF THE UNITED STATES,
For the Eastern District of Michigan, ss:

On this twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-nine, before me, William D. Wilkins, a commissioner duly appointed and empowered to take acknowledgments of bail, affidavits, and depositions, etc., within the eastern district of Michigan, in the matter of the libel and claim of H. Norton Strong, owner of the propeller Mayflower, libellant, against the steamer Dove & her engine, machinery, boats, &c., in a cause of collision, civil and maritime, moved and prosecuted in the district court of the United States for the district aforesaid. Which day personally appeared Solomon Gardner

on behalf of the River & Lake Shore Steamboat Line as claimant of the said steamer Dove & her engine, boats, &c., and produced for surety Christopher C. Blodgett, of Detroit, in said district; and the said Solomon Gardner & Christopher C. Blodgett, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of thirty-eight thousand ($38,000) dollars, unto the said H. Norton Strong, libellant, that the said Solomon Gardner or said claimant shall abide and answer the decree of the said court in the aforesaid cause; and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wherever the same may be found, to the value of the sum above mentioned.

S. GARDNER.
C. C. BLODGETT.

Taken and acknowledged this 23d day of June, A. D. 1869, before me,
WM. D. WILKINS,
U. S. Commissioner, 6th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

For the purposes of the suit referred to in the above bond, it is now stipulated and agreed by and between us, as parties thereto, that the cash value of the said above referred to is the sum of dollars.

Dated Detroit, , 187 .

395 EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally , of Detroit, and made oath that he is worth the sum of thirty-eight thousand dollars of lawful money of the United States of America, after payment of his just debts, in real estate subject to execution, within the eastern district of Michigan.

On the 23d day of June, A. D. 1869, the said sworn to the truth of the above attestation, before me,

WM. D. WILKINS,
U. S. Commissioner, 6th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby approve of the within bond, and of the sureties therein named, as sufficient.

Given under my hand at Detroit, in said district, this day of 18 .

U. S. District Judge of Michigan.

(Indorsed:) No. 1239. District court of the United States for the eastern district of Michigan, in admiralty. Stipulation to answer judgment. H. Norton Strong, libellant, vs. Steamer Dove, her engine, boats, &c. Bond in $. , surety. Taken, acknowledged, and filed, June 23d, 1869. Wm. D. Wilkins, dep. clerk.

396 *Claim.*

To the Hon. Ross Wilkins, judge of the district court of the United States for the eastern district of Michigan, in admiralty:

The claim and answer of the River and Lake Shore Steamboat Line, intervening for their interest in the steamer Dove, her boats, tackle,

apparel, and furniture, to the libel of H. Norton Strong, alleges and propounds as follows:

That it claims the said steamer Dove, and states that it is the sole, true, and bona-fide owner of the said steamer, her boats, tackle, apparel, and furniture.

And for answer to said libel the said claimant says:

First. That it admits the allegation contained in the first article of said libel.

Second. That it admits that about the time stated in said libel a collision occur'ed between the said steamers Dove and Mayflower, but denies that the statements respecting said collision contained in the second and third articles of said libel are true, and avers that the
397 facts are as hereinafter *sta*stated, and not otherwise, to wit: That on the 31st day of May, A. D. 1869, the said Dove being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, appareled, tackled, & appointed, and having the usual and necessary complement of officers and men, stationed at their proper posts and upon the lookout for the protection and safety of said vessel, and with her proper and usual signal-lights properly displayed and brightly burning, was bound on a voyage from Detroit to Port Huron and intermediate points in Canada and Michigan. That about the hour of eleven o'clock in the night-time said Dove was proceeding up the St. Clair River, close in on the American-channel bank and just below Ricarde dock, so called; that the night was somewhat foggy, and said Dove was proceeding at a slow rate of speed and sounding her fog-whistle at short intervals and in such a manner as to indicate to all approaching steamers that she was proceeding up close to the American-channel bank.

Third. That at the same time the said Mayflower, with insufficient officers and crew, and they not attending to their duty, and with
398 no colored signal-lights properly displayed and burning, and blowing no fog-whistle as the law demands, and at too great speed, was running down the St. Clair River.

Fourth. That said Dove constantly signalled all steamers that might be approaching, to keep to the left, by two signal blasts; that when she saw said Mayflower she again gave two blasts of her whistle, stopped and backed, and at the time of the collision hereinafter mentioned was nearly or quite at a stand-still.

Fifth. That notwithstanding all the efforts possible on the part of the officers and crew of the Dove to avoid said collision, the said Mayflower came down upon said Dove, striking her upon her port bow, and causing such damage that the boat was in immediate danger of sinking, and in order to save said boat and cargo from sinking in deep water, and to save the lives of the passengers and crew, it was necessary to run her into the shore; and the force and momentum of the collision having turned the bow of the Dove towards the Canada shore, she was stranded on said Canada shore, and at once filled with water and sunk.

Sixth. And libellant claims that said Mayflower, her officers &
399 crew, were in fault in the following particulars among others: That she had incompetent and insufficient officers and crew, not properly stationed, and not carefully attending to their duties; that she was proceeding at too great speed; that she neither gave the proper fog signals nor answered the proper passing signals; that she did not properly alter her course or check or stop her headway or take any other

or proper measures to avoid said collision; that there were other errors, faults, and wrong-doings, on the part of said Mayflower, her officers and crew, not known to the libellant, but when discovered he prays may be inserted herein with apt and proper words to charge said defendants.

Seventh. They deny the several allegations contained in the fourth, fifth, and sixth articles of said libel, and aver that said steamer Mayflower, so far from being damaged to the amount of nineteen thousand dollars, as set forth in said fourth article, suffered injury to an amount not exceeding five hundred dollars.

Wherefore this claimant prays that said libel may be dismissed with costs, and that it may have such other and further relief as to law and justice may appertain.

400 River Lake Shore Steamboat Line,
By JOHN A. SLOAN,
Master of the Dove.

STATE OF MICHIGAN,
County of Wayne, ss:

John A. Sloan, being duly sworn, saith that he has heard the above answer read, and knows the contents thereof, and that the same is true.
[S'g'd] JOHN A. SLOAN.

Subscribed & sworn to before me this 27th day of August, A. D. 1869.
HENRY A. MARMON,
Notary Public, Wayne Co., Mich.

Filed Sept. 7th, 1869.
WM. D. WILKINS,
Dep. Clerk.

401

402 At a session of the district court of the United States in the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in Detroit, on Tuesday, the fifth day of October, in the year of our Lord one thousand eight hundred and sixty-nine: present, the Hon. Ross Wilkins, district judge.

STRONG *vs.* STEAMER DOVE } Continued.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in Detroit, on Tuesday, the seventh day of December, in the year of our Lord one thousand eight hundred & sixty-nine: present, Hon. Ross Wilkins, district judge.

STRONG, OWNER PROP. MAYFLOWER, *vs.* STEAMER DOVE. } Continued by consent to January term, 1870.

At a session of the district court of the United States for the eastern district of Michigan continued and held pursuant to adjournment at the district-court room in Detroit, on Tuesday, the fourth day January, in

the year of our Lord one thousand eight hundred and seventy:
403 present, the Hon. Ross Wilkins, district judge.

STRONG, OWNER OF MAYFLOWER, *vs.* STEAMER DOVE. } Continued to first Tuesday in February, 1870.

At a session of the district for the eastern district of Michigan, continued & held pursuant to adjournment in the district-court room in Detroit, on Tuesday, the twelfth day of April, in the year of our Lord one thousand eight hundred and seventy: present, Hon. John W. Longyear, district judge.

H. NORTON STRONG *vs.* STEAMER DOVE. } Set down for hearing by consent on April 25th, 1870.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in Detroit, on Tuesday, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy: present, the Hon. John W. Longyear, district judge.

404 RIVER AND LAKE SHORE STEAMBOAT LINE *vs.* THE PROPELLER MAYFLOWER, HER ENGINE, &c., and H. NORTON STRONG, OWNER OF PROP. MAYflower, *vs.* STEAMER DOVE, HER ENGINE, &C.

These causes now coming on to be heard together, upon the libels, answers, and depositions therein, and the parties thereto, with their respective proctors, being present in court, the court thereupon here read the pleadings, and a portion of the depositions therein, and the cause is continued for further hearing.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in Detroit, on Wednesday, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and seventy: present, the Hon. John W. Longyear, district judge.

RIVER AND LAKE SHORE STEAMBOAT LINE *vs.* PROPELLER MAYFLOWER, HER ENGINES, &C., and H. NORTON STRONG, OWNER OF PROP. MAYflower, *vs.* STEAMER DOVE.

This cause coming on for further hearing upon the libels, answers, and depositions therein, & the parties with their respective proctors being present in court, the court hear further depositions in the case, and the cause is continued for further hearing.

405 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to ad-

journment at the district-court room in Detroit, on Thursday, the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and seventy: present, the Hon. John W. Longyear, district judge.

RIVER AND LAKE SHORE STEAMBOAT LINE
vs.
PROPELLER MAYFLOWER,
and
H. NORTON STRONG, OWNER OF PROP. MAYflower,
vs.
STEAMER DOVE.

This cause coming on for further hearing, and the parties thereto, with their respective proctors, being present in court, the court hear the evidence of Edward Molitor, Alfred P. Toulins, John I. Fletcher, John Westaway, John A. Sloan, and Thos. Dumont, sworn on behalf of libellants, and the cause is continued for further hearing.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in Detroit, on Friday, the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy: present, Hon. John W. Longyear, district judge.

RIVER & LAKE SHORE STEAMBOAT LINE
vs.
PROPELLER MAYFLOWER,
and
406 H. NORTON STRONG, OWNER OF prop. Mayflower,
vs.
STEAMER DOVE.

This cause coming on for further hearing, and the parties thereto, with their respective proctors, being present in court, the court hear the evidence of Jos. Nicholson, sworn on behalf of libellant, and Joseph Ricor, Nelson Woodworth, and Josiah Woodworth, and the cause is continued for further hearing.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in Detroit, on Saturday, the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy: present, the honorable John W. Longyear, district judge.

RIVER AND LAKE SHORE STEAMBOAT LINE
vs.
PROPELLER MAYFLOWER,
and
H. NORTON STRONG, OWNER PROP. MAYflower,
vs.
STEAMER DOVE.

This cause coming on for further hearing, and the parties thereto, with their respective proctors, being present in court, the court hear the evidence of William Morris on behalf of Strong, and the cause is continued for further hearing.

407 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in Detroit, on Monday, the sixteenth day of May, in the year of our Lord one thousand eight hundred and seventy: present, the honorable John W. Longyear, district judge.

RIVER AND LAKE SHORE STEAMBOAT LINE
vs.
STEAMER MAYFLOWER,
and
H. NORTON STRONG, OWNER MAYFLOWER,
vs.
STEAMER DOVE.

On motion of Messrs. Newberry, Pond, and Brown, proctors for libellants, and Alfred Russell, esq'r, proctor, H. N. Strong consenting thereto, it is ordered by the court that the testimony in these cases be printed with abstracts of the pleadings, and it is further ordered that the expense of printing, and also the compensation of a short-hand reporter to take down the testimony, be taxed in favor of the prevailing party, and paid as part of the costs.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in Detroit, on Tuesday, the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and seventy: present, the honorable John W. Longyear, district judge.

408 THE RIVER AND LAKE SHORE STEAMboat Line
vs.
THE PROPELLER MAYFLOWER,
and
H. NORTON STRONG, OWNER OF THE MAYflower,
vs.
THE STEAMER DOVE.
} Collision.

This cause now coming on for further hearing upon the libels, answers, and proofs therein, and the parties thereto, by their respective proctors, being in court, the court hear the argument of Mr. Newberry on behalf of the libellant.

At a session of the district court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room in Detroit, on Wednesday, the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy: present, the honorable John W. Longyear, district judge.

THE RIVER AND LAKE SHORE STEAMBOAT Line
vs.
THE PROPELLER MAYFLOWER,
and
H. NORTON STRONG
vs.
STEAMER DOVE.
} Collision. In admiralty.

This cause now coming on for further hearing on the libels, and answers, and proofs therein, and the parties thereto, by their respective proctors,

being present in court, thereupon the court hear the argument of Alfred Russell, esq'r, on behalf of claimant.

409 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in Detroit, on Thursday, the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy.

RIVER AND LAKE SHORE STEAMBOAT LINE *vs.* THE PROPELLER MAYFLOWER, and H. NORTON STRONG *vs.* THE STEAMER DOVE.	Collision. In admiralty.

This cause now coming on for further hearing on the libels, answers, and proofs therein, and the parties thereto, by their respective proctors, being present in court, thereupon the court hear the argument of Wm. A. Moore on behalf of libellant, and the cause is submitted for judgement.

At a session of the district court of the United States for the eastern district of Michigan, begun and held at the district court-room in Detroit, on Tuesday, the seventh day of March, in the year of our Lord one thousand eight hundred and seventy-one.

H. NORTON STRONG *vs.* THE STEAMER DOVE, HER ENGINE, &C.	On libel for collision. In admiralty.

This cause having been heretofore tried by the court, and the court having taken time to consider of its decree therein, and having maturely weighed the pleadings and proofs, and the arguments of counsel submitted therein, and due deliberation being had, it is now by the court ordered, adjudged, and decreed that said libel be, and the same hereby is, dismissed, with costs to said claimant, to be taxed.

410 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Darius J. Davison, clerk of the district court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing to be the record in the case of H. Norton Strong, libellant, against the steamer Dove, her engine, &c., being the original libel, answer, and stipulation to answer, judgment, and copies of all interlocutory and final orders and decrees of the district court therein. Said record is made and sent up pursuant to the order of the circuit court of the United States for said district made and entered in the case of the River and Lake Shore Steamboat Line, owners of steamer Dove, libellants and appellees, against the propeller Mayflower, her engine, &c., H. Norton Strong, claimant and appellant.

Witness my hand and the seal of said court, at Detroit, this eleventh day of December, A. D. 1872.

[SEAL.] D. J. DAVISON,
Clerk.

411

412 The circuit court of the United States for the eastern district of Michigan. In admiralty.

The answer of H. Norton Strong, claimant of the propeller Mayflower, her boats, tackle, &c., to the supplemental libel of the River and Lake Shore Steamboat Line, libellants, alleges as follows:

First. He admits the matters set forth in the first article of said supplemental libel to be true.

Second. As to the matters set forth in the second article of said supplemental libel, this respondent says, that on the 22d day of June, 1869, he filed his claim & answer to the libel of said River and Lake Shore Steamboat Line, against the said propeller Mayflower, alleging among other things that the collision in said libel set forth was occasioned solely by the negligence & carelessness of the persons navigating the steamboat Dove, & also alleging that by reason of said collision great damage was done to said propeller Mayflower, "the just amount of
413 which he would proceed to recover by cross-libel." And he further alleges that on the same day, to wit, the 22d day of June, 1869, this respondent did file a cross-libel to recover said damage so occasioned to said Mayflower by reason of said collision with the said Dove.

Third. As to the matters set forth in the third article of said supplemental libel, respondent says that he admits that on the seventh day of March, 1871, an order was entered in said cause in substance as in said third article set forth, and that on or about the 29th day of April, 1872, a final decree was entered for 14,114 $\frac{67}{100}$ dollars in favor of said libellants, from which this respondent has appealed to this court.

Fourth. As to the fourth article of said supplemental libel, respondent says that he admits the facts therein stated to be true. But he alleges that the libel therein referred to as being filed on the 22d day of June, 1869, was the cross hereinbefore referred to, and which was referred to in respondent's original answer in this cause.

414 Fifth. As to the fifth article of said supplemental libel, respondent admits that the said libellants filed their answer to said cross-libel so as aforesaid filed by this respondent, and that subsequently, and on the seventh day of March, 1871, a decree was entered by said district court, as set forth in said fifth article of said supplemental libel.

Sixth. As to the sixth article of said supplemental libel, respondent says that he is advised that said decree, by reason of his appeal hereinbefore referred to, has been suspended and removed into this court, and, therefore, he denies that he is in any manner estopped thereby.

Seventh. And for further answer to said supplemental libel, respondent says that the libel filed by him as aforesaid, and set forth in said supplemental libel, was filed as a cross-libel to recover the counter-claim due to respondent on account of the same identical collision as that
415 set forth in libellants' original libel and arising out of the same cause of action for which said original libel was filed, and no other; that during all the progress of the cause in said district court the same was treated by the counsel for the respective parties and by said court as a cross-libel and as forming a part of one cause with said original libel; that orders were made respecting both libels as in one cause; that depositions and proofs under said original and cross-libels were taken as in one cause; that under an order of said court said proofs were printed by the respective parties; that the proofs in behalf of said libellants were printed by their proctors under the following title, to wit:

"U. S. district court, eastern district of Michigan. In admiralty.

"RIVER AND LAKE SHORE STEAMBOAT LINE
"*vs.*
"PROPELLER MAYFLOWER, HER ENGINES, &C. } Libel.

"H. NORTON STRONG
"*vs.*
"PROPELLER DOVE, HER ENGINES, &C. } Cross-libel."

And that the proofs in behalf of this respondent were printed
416 under a similar title; that the said libel and cross-libel, and the matters in controversy thereon, were tried and argued together before the judge of said district court as one cause; and that said district judge considered and decided the same as one cause upon libel and cross-libel, and, in the opinion of said judge, prepared and delivered in said cause, the libel so as aforesaid filed against the said Mayflower was treated and is expressly termed the "original libel," and the libel so as aforesaid filed by respondent was treated as and is six times expressly termed the "cross-libel;" that said opinion subsequent to being delivered in open court was printed by counsel for said libellants under the title of one cause, "upon libel and cross-libel for collision," all of which more fully appears by the record in said district court, and by said proofs and opinion prepared and printed by the counsel for said libellants, to which respondent refers. And it was not to the knowledge of respondent, until the argument of the motion in this court for
417 leave to file said supplemental libel, that it was ever claimed or intimated by the libellants or their counsel that the libel so filed as aforesaid by respondent against the Dove was not in all respects a cross-libel, and he submits that said libellants is estopped to deny that said libel so filed by respondent is a cross-libel, and as such to be treated as a part of one case with said original libel.

Eighth. That all and singular the premises are true.

Wherefore respondent prays that said supplemental libel be dismissed, and that such further order may be made herein as may be just.

(Signed) H. N. STRONG.

F. H. CANFIELD,
Respondent's Proctor.

EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 13th day of December, 1872, before me personally appeared H. Norton Strong, the above-named respondent, and made oath that he had heard the above answer read, and that he knows the contents thereof, and that the same is true.

(Signed) CHARLES M. WILKINSON,
Notary Public, Wayne County, Michigan.

Filed in clerk's office Dec. 13th, 1872.

(Signed) A. MANDELL,
Clerk.

418 The circuit court of the United States for the eastern district of Michigan. In admiralty.

To the judge of the circuit court of the United States for the eastern district of Michigan, in admiralty:

The petition of H. Norton Strong, claimant of the propeller Mayflower, her boats, tackle, &c., respectfully shows, that on the 17th day of June, 1869, the River and Lake Shore Steamboat Line, a corporation under the laws of Michigan, filed its libel in the district court of the United

States for the eastern district of Michigan, in admiralty, against the said Mayflower, her boats, tackle, &c., claiming $18,550 damages to the steamboat Dove, of which said libellant was the owner, by reason of a collision between said propeller and said steamboat, on the 31st day of May, 1869, alleging among other things that said collision was caused by the negligence and carelessness of the parties navigating the
419 said Mayflower, & praying among other things that said Mayflower might be condemned and sold to pay said libellants' claim.

2d. That your petitioner, as claimant of said Mayflower, on the 22d day of June, 1869, filed his claim & answer to said libel, alleging among other things that the said collision was occasioned solely by the negligence & fault of the persons navigating said steamboat Dove, and that by reason of said collision great damage was done to said Mayflower, "the just amount of which he would proceed to recover by cross-libel," and that on the same day, to wit, the 22nd day of June, 1869, your petitioner did file a cross-libel to recover said damages occasioned to said Mayflower, on account of said collision, alleging, among other things, that said collision was occasioned solely by the fault of the persons navigating said Dove, & praying that said Dove might be condemned & sold to pay the damages so occasioned to said Mayflower.

3rd. That on the 3rd day of September, 1869, the said River & Lake Shore Steamboat Line, as owner and claimant of said Dove, filed
420 its answer to said cross-libel, alleging, among other things, that said collision was occasioned solely by reason of the negligence & fault of the parties navigating said Mayflower.

4th. That subsequently, & on the 7th day of March, 1871, a decree was made by the judge of said district court, dismissing said cross-libel, and referring it to a commissioner to compute & ascertain the damages in behalf of the said owners said steamboat Dove on account of said collision, and that upon the coming in of said commissioner's report said district judge made a final decree in said cause, on the 29th day of April, 1872, for $14{,}114\frac{67}{100}$ dollars, in favor of said owners of said Dove, from which your petitioner has appealed to this court.

5th. And your petitioner further shows that said libel so filed by him as aforesaid was filed as a cross-libel, to recover the counter-claim due to him on account of the same identical collision vs. that set forth in the original libel so as aforesaid filed by the owners of said Dove, and arising out of the same cause of action for which said original libel was
421 filed, and no other. That during all the progress of the case in said district court the same was treated by counsel for the respective parties and by said court as a cross-libel, & as forming a part of one cause with said original libel; that orders were made respecting both libels as in one cause; that depositions and proofs were taken under said original and cross-libel as in one cause; that under an order of said court said proofs were printed by the respective parties; that the proofs in behalf of said libellants were printed by their proctors under the following title, to wit:

"U. S. district court, eastern district of Michigan. In admiralty.

"RIVER & LAKE SHORE STEAMBOAT LINE
vs.
"PROPELLER MAYFLOWER, HER ENGINES, &C. } Libel.

"H. NORTON STRONG
vs.
"PROPELLER DOVE, HER ENGINES, &C. } Cross-libel."

And that the proofs in behalf of this respondent were printed under

a similar title. That said libel & cross-libel, & the matters in controversy thereon, were tried and argued together before the judge of said district court as one cause, and that said judge considered & de-
422 cided the same as one cause upon libel and cross-libel, & in the opinion of said judge, prepared & delivered in said cause, the libel so filed as aforesaid against the said Mayflower was treated & is expressly termed the original libel, and the libel so filed by respondent as aforesaid was treated & is six times expresssly termed the "cross-libel;" that said opinion, subsequent to its delivery in open court, was printed by counsel for said libellants under the title of one cause," upon libel & cross-libel for collision; all of which more fully appears by the record in said district court, & by said proofs and opinion prepared & printed by the counsel for said libellants, & to which respondent refers. And it was not until the argument of the motion to file a supplemental libel in said cause (so far as respondent is advised) ever claimed or intimated by said *said* libellants or their counsel that the libel so filed by respondent was not a cross-libel, and as such to be treated in all respects as forming a part of one cause with said original libel.

423 But your petitioner shows that said libel is not upon its face termed "a cross-libel," although it was his intention that it should be treated as such, & that it was filed for the purpose of a cross-libel only.

He therefore prays that an order may be entered in this cause, allowing his said libel to be amended, so as to show upon its face that it is a cross-libel, filed upon "respondent's counter-claim for damages arising out of the collision hereintofore referred to, and respecting which said original libel was filed, & that the record in said cause may be amended so far as necessary to make the same conform to said amendment of said libel, and for such further order as to the court may seem just.

(Signed) H. N. STRONG.

(Signed) F. H. CANFIELD,
Proctor for Petitioner.

EASTERN DISTRICT OF MICHIGAN, *ss*:

On this 13th day of December, 1872, personally appeared before me H. Norton Strong, the above-named petitioner, & made oath that he had heard said petition read; that he knows the contents thereof; that the same is true.

(Signed) CHARLES M. WILKINSON,
Notary Public, Wayne County, Michigan.

424 The circuit court of the United States for the eastern district of Michigan. In admiralty.

RIVER & LAKE SHORE STEAMBOAT LINE
vs.
THE PROPELLER MAYFLOWER, HER ENGINES, &c. } Libel.

and

H. NORTON STRONG
vs.
THE STEAMBOAT DOVE, HER ENGINES, &'. } Cross-libel.

Take notice that on Monday, the 16th day of December, instant, at the opening of the court on that day, or as soon thereafter as counsel can

be heard, a motion will be made in the above cause to amend the cross-libel therein filed by H. Norton Strong vs. The Steamboat Dove, so that the same shall show upon its face that it is a cross-libel, filed upon said Strong's counter-claim, for damages arising out of the collision respecting which the original libel in said cause was filed; and also that the record in said cause be amended so far as may be necessary to conform to such amendment of said cross-libel, which motion will be founded upon the records & proceedings in said cause, & a portion of which the above is a copy.

Yours, &c.,
(Signed) F. H. CANFIELD,
Proctor for Respondent Strong.

To NEWBERRY, POND & BROWN,
Libellant's Proctors.

Filed in clerk's office Dec. 13th, 1872.
(Signed) A. MANDELL,
Clerk.

426 *Depositions taken on behalf of the claimant and appellant under his claim of appeal in U. S. circuit court.*

WILLIAM E. WESTBROOK, being duly sworn, says:

Q. Where do you reside?
A. I reside in East China, in St. Clair County.
Q. How far from Marine City?
A. We call it three miles, or two-and-a-half miles by sections, to the center of Marine City.
Q. How long have you lived there?
A. I have lived there since 1859.
Q. Do you know Ricord's dock?
A. Yes, I own half of it—the lower half of it.
Q. How far is it from the outer edge of the dock to the shore?
A. Twelve rods.
Q. State whether there are spiles just below the dock, and how far do those extend?
A. About one hundred feet.
Q. Down stream?
A. Yes, sir.
Q. They extend about parallel with the outer edge of the dock?
A. Yes; all but a few of the outer tier, and some of them are still there.
Q. Then from the shore to the outer edge of the lower spiles is about twelve rods?
A. It may be eight feet difference, but I think the ice has made the outer tier about eight or ten feet apart.
Q. What do you mean by eight or ten feet apart?
427 A. The tier of piles running up and down the stream the lower end of the outside tier the ice shoved over, either pulled them out or shoved them over those next inside, so that it would not be so far from the bank to the lower spiles that now remain as those higher up by about eight or ten feet.
Q. Are you acquainted with the character of the bank along there?
A. Yes, sir; I have bathed and fished there.
Q. How far is it from the water's edge to the channel bank at the lower point of those spiles?

A. Well, it would be eleven rods or more.

Q. How near to the channel bank are the outer spiles?

A. They are just over the outer edge of the channel bank, so that the outside spiles would be in eleven feet of water and the other spiles in about six feet of water.

Q. State whether the channel-bank is the same as to boldness all the way down the river, and how far.

A. It is the same running all the way down. You have the current out of the channel-bank, five feet of water, and then twelve feet, and sometimes six, may be four-and-a-half; it varies a trifle, very little, all the way down—from nine to twelve rods—for a mile there.

Q. What is the nature of the shore?

A. Slanting; almost on a level with the water, except, right at the edge of the river, it has thrown up a little bank; in some places it is six, eight, or ten feet high for a hundred rods back; it extends back probably twenty-five rods; at the lower end of my place thirty to forty, and from that to a hundred rods it curves round; the marsh commences at the dock, so that you cannot go from our farm to the edge of the river. You could this year, but not as a general thing, because there is water there; it would take a horse up to his belly.

Q. You say this marsh extends to the lower end of the dock?

428 A. Yes, sir; and one mile and a little more down the river.

Q. Any trees growing on this marsh?

A. Not a tree. I think there are two bushes about four feet high, about a hundred yards from the dock.

Q. How is the land back from the marsh?

A. It is low and cleared. There are fifteen little hickory trees back one hundred and twenty-five or one hundred and thirty yards from the river, standing separate from each other, not over sixteen or eighteen feet high; and then Borrodine has an orchard about eighty rods from the river and about seventy-five rods below our dock from the line east and west.

Q. From a quarter of a mile below the lower edge of your dock, about what is the course of the channel-bank up to your dock?

A. Well, I cannot say; I cannot give you that course.

Q. State as near as you can.

(Question withdrawn.)

Q. Do you recollect the collision of the Dove and Mayflower on the 31st of May, 1869?

A. Yes, sir.

Q. Where were you that night?

A. I was, I think, from half past nine till half past ten, standing on a hay-scale right in a line with the river's bank.

Q. How near the dock?

A. Within twelve rods of it, right on the inner edge of it.

Q. How was the weather?

A. It was a quiet, still, foggy night.

Q. Did you at any time see the Canada shore?

A. Yes; saw it by looking up the river; looking up above our place; but to look right across I could not see it.

429 Q. Why could you not see it?

The fog hung over the bank and the river below our dock. We could not see it below.

Q. Will you explain how these fogs lie and in what localities they settle?

A. If the wind is in the east they lay on the American shore, in the

marshy bay below us, as far back as the timber, and even if there is no wind it will be very foggy there, and clear back from the timber, and even as far back as the Canada shore.

Q. On which shore do the fogs hang most heavily?

A. Generally on the American shore.

Q. How was it this night?

A. On the American shore and in the marsh. I suppose it was not over on the Canada shore; the fog was not very thick above us; it was a slight fog, but not so that you could not see; occasionally you could see across the river.

Q. Did you see any lights on the water?

A. No, sir; no lights.

Q. Did you see any fishing-lights?

A. Not a fishing-light. There was nobody fishing between the dock above that they call Stanley's or Gray's dock; there was no fishing by torchlight.

Q. Could you have seen it from your position?

A. Yes, sir.

Q. How high are those lights?

A. About four or five feet above the water, made of pitch-pine or hickory-bark, and cast a very bright light.

Q. Which could be more easily seen, one of those fishing-lights or the lights of a steamer?

A. I cannot say; there were no steamers in sight.

Q. Which of the two lights would naturally throw the brightest light on the water?

430 A. The fishing-lights would throw a reflection—a very bright reflection—on the water, and I think the longest; but there were no steamers in sight either up or down the river on that night. The fish-lights would throw the strongest light.

Q. How far is your house from the dock's outer edge?

A. About thirty-two rods.

Q. How far is it from the channel-bank?

A. Say a quarter of a mile—to the outer edge of the dock about a quarter of a mile.

Q. Are there any trees intervening between the dock and your house?

A. Yes, sir.

Q. Any buildings?

A. One building and a building on the dock. There are two buildings.

Q. Are you acquainted with the point that extends out into the river a quarter or a half mile below your dock?

A. Yes, sir; I am.

Q. Are there any trees intervening between it and your house?

A. Yes, sir.

Q. You say you went home that night about half past ten?

A. Yes, sir.

Q. Were the other members of you family abed?

A. All of them.

Q. Did you go directly to bed?

A. Yes.

Q. Where is the room situated that you occupied that night?

A. At the southeast corner of the house, facing the *the* river, up stairs.

Q. Did you strike a light when you went home?

A. No, sir.

431 Q. Was there any light burning in your house that night after you went home?

A. No, sir; there was no light when I went up to the house, nor afterwards that night.

Q. Are there any other rooms in the upper story of your house facing the river?

A. Yes; but it was not occupied that night.

Q. Are you acquainted with Captain Sloan, of the Dove?

A. Yes, sir; well acquainted with him.

Q. State whether you have gone up and down the river with him.

A. Yes, sir; a great many times.

Q. Do you recollect one evening about a week or ten days previous to this collision; was the boat intending to stop at your dock that night?

(Question objected to as irrelevant.)

A. Yes, sir.

Q. What part of the boat were you on?

A. I was with Captain Sloan in the pilot-house.

Q. Did you do anything in regard to the running or management of the vessel?

A. I did towards her running but not as to the management of the vessel. I blew the whistle as we came from Marine City; I supposed we were about abreast of our dock, and so blew the whistle, and kept blowing it.

Q. After leaving Marine City, what was your course?

A. We ran across the river so as to make the Canada shore at about John Bury's dock, and then ran up-shore till we run across and strike an angle to our place.

Q. Who had charge of the vessel at that time?

A. Captain Sloan.

Q. How near the dock did you come?

A. I don't know; when we ran up above the dock I whistled
432 and hallowed, and Mr. Ricord answered about fifty rods above the dock, and he said we were right in front of his place—that is, Joseph Ricord's—and then we backed down to the dock.

Q. How was it that night?

A. It was very foggy on the American shore; we could see the Canada shore as long as we stayed anywhere near it.

Q. How did the fog that night compare with the night of the collision?

A. I think it was thicker that night.

Q. And you left the Canada shore near Bury's dock?

A. No; we left the Canada shore near Kirby's; that is about a mile above Bury's dock.

Q. Then I understand you to say you changed your course for the American shore?

A. Yes.

Q. How did you see the American shore from that point?

A. Not clear.

Q. State whether Sloan seemed to express doubts as to his whereabouts.

(Objected to as leading and irrelevant.)

A. He did not know where he was exactly.

Q. Did he ask any questions as to where he was?

A. Well, we talked about where we were. We talked in regard to

where we were, and I asked him. We could not see anything after we left the Canada shore. We did not look at the compass that night.

Q. Do you know whether it was Sloan's custom if running by there in the night to use the lead-line?

A. Never knew him to do so.

(All the above testimony relating to this trip and to Sloan's use of lead-lines objected to as incompetent and irrelevant.)

Q. Did you hear anything of the collis'on?

A. No, sir.

433 Q. Did you hear any whistle or see any light?

A. No, sir.

Q. When did you first learn of the collision?

A. In the morning, about seven o'clock I guess, when the fog raised and I could see her.

Q. Do you know Mr. James B. Newcomb?

A. Yes, sir.

Q. State whether you had a conversation with him the day after the collision.

A. Yes, sir.

Q. What did he say as to having seen the boats, or either of them?

(Question objected to; attention of witness not called to the subject.)

A. The next forenoon I went to his house to get some money from him, and I asked him about the collision, and he said he did not know anything about it till he was told in the morning, and that he and his wife were abed and asleep and did not hear anything.

Q. Did he say anything about having seen the Mayflower?

A. No, sir.

Q. Do you know Mr. Newcomb's reputation, in the neighborhood where he resides, for truth and veracity?

A. Yes, sir.

Q. What is it?

A. It is bad for truth and veracity. I give it to you as they all give it.

Q. You stated this morning that there was no light in your house?

A. No, sir.

Q. Were there lights in any of the houses about there?

A. I was in a position where I could see them all; there were no lights at all.

Q. Are you acquainted with the parties up the river above Ricord's?

434 A. Yes; I know all to St. Clair.

Q. State whether they are pretty thickly settled.

A. Yes.

Q. Numerous?

A. Yes; they are French claims, and the farms are very narrow.

Q. State whether you could see near the river's bank.

A. Very close to the river's bank.

Q. How is the bank above there?

A. Bold and high.

Q. About how far, on an average, do the houses stand from the river?

A. From four to six rods—eight, maybe—some of them as near as four and some eight rods from the river.

Cross-examined by Judge Brown:

Q. Do you live on the road that runs directly back from the river?

A. Yes, sir.

Q. At right angles?
A. Pretty near right angles.
Q. How far do you live from the buildings on the dock?
A. I live about twenty-six rods.
Q. On which side of the road, the upper side or lower side?
A. The south side of the road.
Q. How many houses are there on the south side of the road for a quarter of mile back from the dock?
A. Two.
Q. How many on the north side?
A. There are two.
Q. What are the other buildings?
A. There is one on the south side of the road; then there is
435 the house belonging to me—and that is my dwelling-house—and there is also a house immediately on the corner belonging to Mr. Ed. Neal; and his barn, that is on the dock.
Q. What was the color of your house at that time?
A. White. The house I live in is white and the other is a wood color.
Q. When was your attention first called to this matter of a light in your house?
A. Very shortly after Dana swore there was a light there.
Q. Who called your attention to it that time?
A. I cannot tell.
Q. Was there anything to call your attention to the fact that there was no light there?
Q. At our house?
A. Yes.
A. Well, I walked up the road and saw no light there. On the east side of the road they were all abed, and, as I usually do, I went to bed without a light that night.
Q. What time did you go to bed?
A. About half-past ten. As soon as I came from the scale on the dock I went to bed.
Q. How came you up so late that night; were you fishing?
A. I was not fishing.
Q. What were you doing that evening?
A. I was hunting.
Q. Whom were you with that evening?
A. With Mrs. Conant.
Q. What were you hunting, and where?
A. Well, I was hunting after her, in her house—and found it.
Q. Did you notice Mr. Taylor winking?
A. I saw Mr. Taylor winking at me.
436 Q. Did he shake his head?
A. I don't believe he did.
Q. Did you drink anything that evening?
A. No, sir.
Q. Didn't you?
A. No, sir.
Q. What time did you leave Mrs. Conant's house?
A. About ten o'clock.
Q. Where is her house?
A. It is directly round the corner. She lived in one of the upper stories.
Q. Was Mrs. Conant a woman of bad reputation?

A. No; she had not lost her reputation, because it was not known. So far as her business is concerned she is supposed to be virtuous.

Q. How many houses were there along the road that runs parallel with the river for a quarter of a mile above the dock?

A. There were three. There were five above the road and three above the dock.

Q. Are you sure there were no lights in Mrs. Conant's house when you left her?

A. Yes, sir; nor any above that.

Q. Now, are you able, after the lapse of more than three years, to swear positively there were no lights from any of the houses that night in the neighborhood of Ricord's dock?

A. Yes, sir.

Q. What were you doing on the dock?

A. Kind of recruiting; cooling off.

Q. Was Mrs. Conant there?

A. No, sir; she was not; she was at home I suppose. I left Mrs. Conant's about ten o'clock. I did not stay there longer than necessary.

Q. Did you see the Canada shore from where you were standing?

437 A. I could see it about half of a mile above our place. I could not see it directly opposite, but I could see it at times when the fog shifted.

Q. Could you see Reynold's dock?

A. I did not take notice of that.

Q. Was there any fog between you and Reynold's dock?

A. There was some fog, but not so much but that I could see the Canada shore between us and Reynold's dock; there was more fog at some times than at others.

Q. How far is it from Ricord's dock to Reynold's?

A. It must be a mile and a half or more, that is, measuring across the river, but I have not had much chance to know except by guessing at it.

Q. Supposing any one had been fishing opposite Ricord's dock, was it necessary you should have seen him?

A. I do not know as it was absolutely necessary, but I could have seen him unless the fog was very heavy. If there had been anybody fishing at Reynold's, or below for a quarter of a mile, between Ricord's dock and Reynold's, I should have seen them plain. A fish-light would attract more than a steamboat.

Q. Did you notice the time by any watch or clock?

A. No, sir; only from its being after dark.

Q. How long were you on the dock?

A. I thought I stayed there about half an hour.

Q. You did not time it?

A. No, I did not time it. I was round there for an hour or two before.

Q. What time did you go out of Mrs. Conant's house that evening?

A. About half past or quarter past nine.

438 Mr. JOSEPH BROWN, being duly sworn, says:

Q. You were sworn in this cause in the district court?

A. I appeared there.

Q. Do you still live in Canada?

A. Yes, sir.

Q. At the same place where you lived before?

A. Yes, sir.

Mr. Brown, I wish you would look at this map. (The map here shown to witness is the map attached hereunto, and marked with the letter "A.")

Q. Whose dock is that marked "G?"

A. It always goes by the name of Walden's dock.

Q. How far below that is Gray's dock?

A. It is thirty-five rods.

Q. Is Gray's dock marked upon this map?

A. No, sir.

Q. Now, whereabouts is your house?

A. I have marked with a dot on the map the location of the house.

Q. Now mark the location of Gray's dock.

A. This dock is just below the concession line.

Q. Now mark, as near as you can, the location of Gray's house.

A. Close to the edge of the dock, the water's edge.

Q. In your previous examination you testified that you were awakened by the crash of the collision?

A. Yes, sir.

Q. And that as soon as you got out you went to Mr. Gray's house?

A. Yes, sir.

Q. And that you and Gray went down to the place where the Dove grounded?

A. Yes, sir.

439 Q. Will you state whether there was a light struck at Gray's house after you called?

A. There was a light. Mr. Gray brought a lantern with him.

Q. About what time did you go to bed that night?

A. I generally go to bed between nine and ten; I think I did the same that night, or thereabouts.

Q. Where were you during the evening before going home to bed?

A. Around home.

Q. On the bank?

A. I cannot say I was exactly on the bank, but near enough to see round pretty well.

Q. Could you see the river above?

A. Yes; that is, a little way from the shore; not near to it.

Q. How far?

A. Well, we could see the wood on the dock quite handy.

Q. How near to the shore could you see?

A. About five, six, or eight rods. I could see a little closer to the shore a little farther up the river than looking straight down from my place.

Q. Look at the map again and point out the river as far as you could see above.

A. I could see the river as far as Reynold's dock.

Q. Are you acquainted with the localities for fishing up there?

A. Yes, sir.

Q. State whether they were within the range of your vision?

A. Yes, sir; I could see the fishing-grounds well.

Q. Did you see fishing-lights?

A. No, sir; no lights.

440 Q. If there had been any fishing-boats between Gray's dock and your place, could you have seen them or seen their lights?

A. I should most surely have seen them, I think, sir.

Q. After you left your house that night to go down where the Dove grounded, did you see the other vessel, the Mayflower?

A. I could see there were bright lights leaving the Dove.

Q. How was the fog at that time?

A. It was thick out in the middle of the river; on the Canada shore it was quite clear, nothing at all in the way.

Q. Which shore did the Mayflower appear to be near as she passed off?

A. Going directly down for Mr. John Bury's dock on the Canada shore.

Q. Do you know Mr. Bowen?

A. I do.

Q. Has he a dock above there?

A. He has.

Q. State whether you had a conversation with him on board of the Dove shortly after the collision and as she lay aground?

Q. What did he say in regard to seeing the Mayflower as she came down?

(Question objected to, attention of witness not being called to it.)

A. That he saw the Mayflower's light as she was coming down; that he thought she was going to run into his dock; that he was afraid of it; that as soon as he saw her clear it he went to bed and thought no more about it, but that she was very close to it.

Q. Did he say anything about the Mayflower changing her course?

(Question objected to as leading.)

A. No, sir.

Q. What did he say, if anything, as to the Mayflower passing his dock?

441 A. He went to bed, and she was close on the Canada shore.

Q. Did he know anything about the collision that night?

A. He did not express himself more than to say he knew the boat.

(Last question objected to.)

Q. Now, Mr. Brown, do you know Mr. Jas. Newcombe?

A. I do.

Q. Do you know where he was at the time of the collision?

(Objected to.)

A. I cannot say where he was, but saw *I* him the next morning and he manifested his surprise at the Dove being disabled, and that he did not know that the collision had taken place till I told him.

Q. How long have you known Mr. Newcombe?

A. About fifteen years.

Q. Do you know his reputation, in the neighborhood where he resides, for truth and veracity?

A. I do, pretty well.

Q. What is it, good or bad?

A. Bad.

Q. Do you know Mr. Michael B. Hawkins?

A. Yes, sir.

Q. How long has he lived there?

A. I should think about six or seven years. I remember very well when he first came, and I think it must six or seven years.

Cross-examined:

Q. Does your house stand north or south of the orchard?

A. It stands north of the main apple-orchard; there are a few pear-trees standing north of the house thinly scattered.

442 Q. Do they stand in front or back of the orchard?
A. Above the orchard.
Q. What time did you go into your house that night?
A. I should think I went in about nine o'clock.
Q. How long were you outside before going into your house?
A. I could not exactly say.
Q. Within fifteen minutes or half an hour?
A. I really could not fix upon the time particularly.
Q. Did you go to a prayer-meeting that night?
A. I am not sure that I did.
Q. Did you go down to the road, the river road, in front of the house?
A. Well, I cannot answer this either.
Q. How far back from the road is your house?
A. My house is about fifty rods back from the road.
Q. Where were you? Were you at the dock, or just immediately about your house that evening before going in?
A. Most likely within a few rods in front of the house, six or eight rods nearer the river.
Q. Was your attention called particularly to the river that night?
A. Cannot say that it was more than usual.
Q. All that you mean to say, then, with regard to the lights, is that you did not notice any on the river that night?
A. I saw no lights when I went down that night after the collision—no fishing-lights, I mean to say.
Q. Do you know whether there were any lights on the river before you went into the house?
A. I think I should have seen them if there were.
Q. Then all you mean to say is, that you did not notice any?
A. I did not notice any. We can see them pretty plain from our place when there are any.
443 Q. How high is the bank of the river?
A. I should think 8 or 9 feet.
Q. Have you had any quarrel with Mr. Newcombe?
A. I have had no personal quarrel with Mr. Newcombe—just a little disagreement about matters, and his breaking the pledge, and I was appointed a committee to wait upon him; there was a small disagreement between us, and that is all.
Q. He did not say that he did not see the Mayflower?
A. He did not mention the Mayflower.
Q. That he did not know anything about the collision?
A. Yes, sir; he said that particularly—he did not know what had happened to her, only she was disabled.
Q. I wish you would tell me the words he used. What did he say?
A. I have told as near as I possibly can. I met Mr. Newcombe on the road, and told him about the collision. He says, "I saw the Dove disabled, but did not know what had happened her." That was the substance of our conversation.
Q. All that Mr. Bowen said was that he thought the Mayflower was going to hit his dock?
A. Yes; she was close to the Canada side.

Re-examined:

Q. Mr. Brown, state how your house stands; whether you stand high above the river's bank or not?
A. It is quite a fall from the house down to the edge of the bank. I have a cellar about six feet deep, and the drain takes the water out to the surface of the ground by the time it gets 25 rods from the river.

EDWARD RICORD, being duly sworn, says:

Q. Where do you reside?

444 A. I reside in the township of East China.

Q. How near Ricord's dock?

A. About the nearest house to the dock. I have also a couple of small houses.

Q. Do you recollect the collision between the Dove and Mayflower?

A. Yes, sir.

Q. How near was your house to the river's edge?

A. From four to five rods.

Q. And how far above the upper edge or side of the dock?

A. The upper edge of the dock is nearly in front of the house.

Q. Is there any building intervening between your house and the river or outer edge of the dock?

A. No, sir; between part of the edge—there is a barn and storehouse between the edge of the dock and the road—the lower edge.

Q. Taking as a course the range from the Gray's dock to the other side of the river, are there any buildings?

A. No, sir.

Q. Where were you on the night of the collision?

A. I was in the house, in bed.

Q. Did you occupy an up-stairs or down-stairs room?

A. Down-stairs.

Q. State whether the windows of the room you occupied commanded a view of the river in front of the dock.

A. They do. There is not exactly a square view, but they give us a side view.

Q. Did you hear anything of the collision?

A. I did not.

Q. When did you first learn of it?

A. The first of it was, the clerk came to the door and said——

445 (What the clerk said objected to by Mr. Brown.)

A. He said the boat was sunk, and he wanted a horse to go to Port Huron.

Q. Do you know Mr. Westbrook?

A. Yes, sir.

Q. Do you know Mr. James B. Newcombe?

A. I do.

Q. Did you have any conversation with Mr. Westbrook the day after the collision, about Mr. Newcombe—the day after the collision?

(Question objected to as irrelevant.)

Q. Do you know Mr. Newcombe's reputation, in the neighborhood where he resides, for truth and veracity?

A. It is well known—that is, it is generally understood to be——

Q. Is it good or bad?

A. I don't like to answer that question.

Q. Well, if you know, say.

A. Well, it is generally understood that he tells a great many stories with no truth in them.

Q. Did you see Mr. Newcombe the day following the collision?

A. I did not, as well as I can remember.

Cross-examined:

Q. Where did Mr. Newcombe live?

A. Mr. Newcombe lived in Canada.

Q. Do you pretend to know the reputation of the Canadians for truth and veracity?

A. To a certain extent, I do.

Q. Have you ever had any quarrel with Newcombe?

A. No, sir.

Re-examined:

Newcombe formerly lived on the American side. I cannot say when he crossed over there.

446 JOSHUA ROBERTS, being duly sworn, says:

Q. Do you recollect the occasion of the collision between the Dove and Mayflower?

A. Yes, sir, I remember it; but as to what time of it occurred, or anything else, I do not know, for I was in bed asleep.

Q. When did you first learn the facts?

A. The next morning.

Q. About what time?

A. Between four and five.

Q. Do you know Mr. James B. Newcombe?

A. Yes, sir.

Q. Are you a partner of his?

A. Yes, sir.

Q. What time the next morning did you meet Mr. Newcombe?

A. It may have been about five o'clock—had just got up and opened the door, and saw the Dove aground.

Q. Did you hear of the accident before meeting Mr. Newcombe?

A. Yes, sir.

Q. How long after you heard of it did you meet Mr. Newcombe?

A. I had only about 20 to 30 rods to go, and I had to go and make a fire in the mill. The first thing I said——

(Conversation objected to.)

The first thing I said was, "Mr. Newcombe, the Dove got grounded last night," and he said he was surprised; and, says he, "How did that happen?" I says, "There was a propeller ran into her," but did not know what the propeller's name was, and with that he went out to the back part of the mill and looked at it, where she was aground, at Mr. Stanley's dock, and stood there and looked for five or ten minutes.

447 Q. Did he say anything about seeing the propeller?

A. No, sir.

Cross-examined:

Q. How long have you been partner with Mr. Newcombe?

A. I guess about four years.

Q. Did he say where he was the night before?

A. The night before the collision?

Q. The night of the collision.

A. He told me he was out fishing. They only went about the mill. The fog came on so thick they could not see and he came ashore.

Q. Did he say whether he saw the Mayflower?

A. He did not say whether he saw her at all.

Q. He did not deny that he saw her or heard the crash?

A. No, sir.

Q. How long have you known Mr. Newcombe?

A. I have known him since the war; six or seven years.

Q. Are you still a partner of his?

A. Yes, sir.

Q. Have you had any difficulties with him?
A. No, sir; not the least.
Q. Do you know his reputation for truth and veracity in that neighborhood?
(Objected to by appellant.)
A. I cannot say I heard anything against him or his character in any way.
Q. Do you say his reputation is good or bad?
(Objected to.)
A. It is good so far as I know. I know nothing to the contrary.

448 Re-examined:

Q. Did Mr. Newcombe tell you what kind of fish he caught that night?
A. No, sir; he did not catch any.
(Question objected to.)

HENRY DONALDSON.

Q. You were second mate of the Dove at the time of the collision?
A. I was acting as second mate, and have been sworn once before in this case. I left the Dove about two weeks after the collision; after she got in the dry-dock. I do not know the day of the month.
Q. Where did you ship on board the Mayflower?
A. Marine City.
Q. Previously to this time had you any conversation with Capt. Woodworth, or any one interested in the Mayflower, with regard to the collision?
A. No, sir.
Q. State the circumstances under which you were shipped on board of the Mayflower.
(Question objected to.)
A. After I left the Dove I went up to Marine and went to Frank Hart, and he said——
(Conversation with Frank Hart objected to.)
I spoke to him and asked him, as a propeller was coming along, if he could not see and get me a wheelsman's berth; he said he would. I had then been ashore about two weeks, and the Mayflower came along, and I went as wheelsman aboard of her.
(Conversation objected to.)
I went down to the boat and I spoke to them, and wanted to know if they wanted a wheelsman, and the captain asked me if I thought I could steer the boat, and I told him I did not know; I could try; and he said if I did not know he would like to know who the hell did. And
449 I told him I would have to go for my clothes. He said, never mind, that I and his sons were about the same size, and they could fit me out.
Q. In your former testimony you spoke of the conversation between you and Capt. Sloan, near Bury's dock?
A. Yes, sir.
Q. What did Sloan say in regard to shaping his course for Ricord's?
A. He asked me whereabouts I thought we were, and I told him opposite Bury's dock; and I saw two large trees; and he said, I think I can shape my course for Ricord's dock. Instead of fetching Ricord's dock he fetched below there, in the marsh.
Q. You were on the pilot-house, all the time, from Bury's dock up to the time of the collision?

A. Yes, sir, I was.
Q. How near to Capt. Sloan were you standing?
A. About three feet.
Q. Did you blow the whistle?
A. I blew the whistle.
Q. State whether you were near enough to hear the conversation between Capt. Sloan and the wheelsman?
A. Well, I should think I was near enough.
Q. Did you hear the orders that were given?
A. Yes, sir.
Q. After grounding did you hear Sloan ask the wheelsman what course they were on?
(Question objected to as leading.)
A. I did not.
Q. Did you at any time after leaving Bury's dock hear Sloan ask the wheelsman what course they were on?
A. No, sir.
Q. Would you have heard it if he had said so?
A. Well, I do not know as I should where I was standing. I did not hear the wheelsman telling Sloan.
450 Q. How long a time elapsed after your grounding before the collision?
A. I should judge half an hour.
Q. Did you hear any inquiry by Sloan of the wheelsman as to how they were heading?
A. No, sir, I did not.
Q. Do you know whether they ran by compass from Marine City up?
A. Well, I cannot say. The custom is not to run by compass. We never run by compass on the river.
Q. How long was the Dove reaching the shore after colliding?
A. It was not over six or seven minutes. I do not know that it was that.
I heard no conversation between the officers of the Dove as to about the shore they were on after the collision. The wheelsman and I had a conversation. After we got ashore, Robinson went up to the pilot-house to see how she was heading by the compass. That was after we got ashore, and I forget now how he said she was heading.
Q. How far did the Dove back after grounding, before the collision?
A. Well, I should think she ought to have backed out. Well, I cannot state now how far she backed out, because it was in the fog, but I should judge she backed out half way across the river.
Q. After backing out in the river what order did Sloan give the wheelsman?
A. To put his wheel aport; that is, by straightening her up the river.
Q. Did he say to straighten her up the river, or put his wheel aport?
A. I said he said put his wheel aport. After he thought she had swung round enough, he told him to steady.
451 Q. Now on which side of the river, in your opinion, did this take place?
(Question objected to.)
A. I should judge she was nearest the Canada shore, because she never could have run across that river with that hole in her bow.
Q. What dock was she nearest?
A. Well, I could not tell when we were ashore, but at daylight she was near Gray's dock.
I am now mate of the propeller Buffalo.

(All the above testimony objected to because the witness was fully examined as to these points upon his first examination.)

Cross-examined:

Q. How came you to apply for a situation on the Mayflower?

A. Because I was out of work.

Q. Why did you select the Mayflower?

A. I did not select her; she was the first boat that came along and wanted a wheelsmaan.

Q. How long had you known Capt. Woodruff?

A. About two or three years by sight, not to speak to him. Never spoke to him before I went aboard the Mayflower.

Q. Did he ask you any questions as to your competency when you shipped as wheelsman?

A. He did not ask me any questions; only he wanted to know if I thought I could steer the boat.

Q. Did you tell him whether you had ever served as wheelsman?

A. I did not.

Q. Did you tell him that you had ever been on a boat?

A. No, sir; I did not know whether I could steer her, but I have steered just as big a boat as she is.

452 Q. Did you mention what boat?

A. No, sir.

Q. Whom did you employ to get the situation for you?

A. Frank Hart.

Q. Did you tell him what experience you had had?

A. Never told him, because he knew me ever since I had been sailing.

Q. Did he know what boats you had been in?

A. Yes.

Q. Did he know you had been on the Dove?

A. Well, I suppose he did, for he rode up several times while I was aboard of her.

Q. Did you hear the conversation between Hart and Woodworth with regard to shipping you?

A. No, sir, I did not. Hart was on the dock.

Q. Hart must have had a talk with Woodworth?

A. No. Mr. Hart came up to the house after me, and I went down to the boat.

Q. Did he tell you what boat he was going to ship you on?

A. No, sir. He said the propeller Mayflower was down there and wanted a wheelsman.

Q. Did he say how he knew she wanted a wheelsman?

A. No, sir.

Q. I understood you to say that Sloan may have asked the wheelsman about his course and you not hear it?

A. Yes.

Q. Why do you think the collision was nearer the Canada shore?

A. Because, as I stated before, with the hole in her bow she could not run across the river without sinking before she got there.

Q. Is that your only reason?

453 A. Yes, sir.

Q. How far do you think the collision was from the middle of the river?

A. I do not know how far. I think it was from the middle of the river. It must have been somewhere about the middle of the river we had the collision.

JAMES CAREY, being duly sworn, says:

Q. Where do you live?

A. Sombra, the upper part of it, on Saint Clair River. Have lived there 25 years, and recollect the collision between the Dove and Mayflower some time ago, but I do not know the day of the month. I was staying at my mother's house that night.

Q. State where her house is.

A. It is a fractional lot below Gray's dock and above Clay Creek.

Q. On which side of the road is it?

A. On the left-ha'd side going up and the right-hand side coming down, between the road and the water.

Q. Where were you that night, at the time of the collision?

A. Setting down on a stool outside the door.

Q. Between the house and the river?

A. Yes; facing the river.

Q. State whether you could see the river plainly?

A. There was a slight fog, but there was a heavy fog on the American side. I could see the river; there was a light fog. I could distinguish things half way across. There is always a heavy fog from the marshes on the American side.

Q. Where was the Mayflower when you first saw her?

A. I saw her above Waldron's dock, coming down.

Q. Which side of the river was she nearest to?

454 A. In the middle of the river. There was a heavy fog, but she was on her right course coming down; she was nigher to the Canada shore.

Q. Where was the Dove when you first saw her; which way was she going?

A. She came up by Alex. Kerby's house. She seemed to be coming across from the fog up by Kerby's house. I could distinguish her quite plain.

Q. From what shore did she appear to be coming?

A. From the American shore. I saw the red light on the Mayflower on the Canada side. I saw a red and green light on the Dove; I saw the vessels when they collided; they were nearest the Canada shore, between Clay's Creek and Gray's dock. They were about six to seven chains from Gray's dock. There is a large swamp; it commences just beside Gray's dock, a little below, and extends down for a mile, about as far as Bury's.

Q. On which side of the river did the fog seem heaviest?

A. On the American side. Saw the Dove when she stranded.

Q. Did you go down?

A. Yes, sir. Mr. Brown was there; Mr. Gray came down after a while. I got up sticks and one thing and another down there for a fire; it was a cool evening and they wanted a fire.

Q. About how far from Gray's house is your mother's house, where you were staying?

A. It may be three chains or four chains; call it four chains, anyhow.

Q. Could you see Gray's house distinctly?

A. Quite plain, and the light in it after the collision took place.

455 Cross-examined:

I live about three and one-half acres from my mother's, on the front road above my mother's, north, between Reynold's and Waldron's. There is no other creek but Cherry Creek and Clay's Creek that I know

of. I live nearer Waldron's than Reynolds'. I must have lived in that same place twenty or twenty-five years. I have been a few years in Detroit; and ten years at one time. I am a farmer. My brother was teaching school at Bear Creek; his daughter was at Mr. Ellis's, and his wife was at her mother's. I had the care of the premises at my mother's; there was no one there but myself. My mother is dead. I went there to sleep that night, and to take care of it. I had not been there all day; I came down in the evening between eight and nine o'clock; I went into the house, sat down, lighted a candle, and was reading a long time, then got out of doors and sat down; I set there about an hour or two hours; the reason I did not go to bed is because I like to sit up once in awhile in front of the river when I am at home. I had no clock or watch, but I think the collision happened between 11 and 12; I sometimes set up as late as 2 o'clock reading and writing; I do all sorts of reading; making poetry; I read history and the newspapers, and all sorts of things. When I first saw the Mayflower she was above Waldron's dock; she was showing a red light and a blue light; I saw the red light on the Canada side; I saw her blue or green and white lights; they generally have a blue or green light. I have seen the green light as well as the red light on the Mayflower; I am sure about that; it was the red light and not the green light; I saw the green light too; I saw the red light and blue light on the Dove; I am sure I saw the red light; I did not see any other light; I saw the boats when they came together; there was
456 a slight fog when they came together, but not so bad but that they could see each other plainly, but there was a heavy fog on the American side; they could have seen each other four or five chains off where the collision happened; they were nigher the Canada shore than the American side altogether; I think they were five or six chains from Gray's dock when the collision happened; Gray's dock is right on the channel bank. I could see them distinctly when they came together; I could see the chips fly when they came together; they could see each other's lights a quarter of a mile off where they came together, but the fog was denser on the American side; they could not have seen each other so far there. I could not see the men on deck when the Mayflower went down; I do not believe the men were on deck; a fellow could not see very well; there might have been a man in the pilot-house, but I could not see him in the pilot-house; if there had been men standing on the deck I could have seen them quite plain; it was not a dark night; there was quite a fog, though. The Dove has her name on the wheel-house; I could not read the name from where I stood; it was too dark for that. I saw Brown there after the collision took place. Newcombe was not there; I know Newcombe; I have known him several years; that is all of my neighbors I saw there; my neighbors and I had a talk about it next day; I stayed down there till about daylight. I was asked to come here as a witness by Mr. Taylor; I forget the day, but I think about a fortnight ago; it may be more or less; I never talked with anybody about it since the collision took place. I heard about Mr. Brown and his wife coming down here and swearing two or three years ago; I knew of Mr. Newcombe coming; and when he came home he said he had $700 for coming down, and that he had made a good
457 thing out of it; and Mr. Gray was there, too. I did not see Capt. Woodworth at that time; in fact I should not have known him. I did not say anything at that time, after having been out that night; the first time I mentioned it was when Mr. Taylor came up, a fortnight ago. The stool I was sitting on was right close up to the front door, on

the river; the front door opens on the river, and the other door opens on the base-line of the road.

Q. How near the middle of the river was this collision?

A. They were nigher the Canada than the American shore.

Q. Did either of the boats whistle that night?

A. Neither of the boats whistled that night at all. I should have heard them if they had whistled, quite plain; I am sure neither of them whistled. The Dove appeared to be steering towards the Canada shore; the Mayflower was on her proper course coming down.

Q. How came you to notice they were nearer the Canada shore?

A. I could tell by the distance from the house; but I could not see the other side of the fog. The fog extended half way across the river, but it was lighter on the Canada side; it was very heavy on the American side; I could not see the wheel-house of the Dove; I could see her half length, and the Mayflower whole length; it was very starlight; no moon, and a cool night. The Dove drifted ashore in from ten to fifteen minutes after the collision; she kept the engines working.

Redirect:

Q. In regard to the whistles on the boat?

A. I never heard them.

Q. Wait till I get through my question. In regard to the
458 whistles on the boats, do you mean to say that none were sounded, or do you mean to say that you do not recollect hearing them?

A. I did not hear them, and I could hear them quite plain if they had been sounded.

Q. How long did they continue to work the engines of the Dove after the collision?

A. I should think about nine or ten minutes; the distance was a short distance.

Q. Did you notice the Mayflower as she passed down after the collision?

A. She went right down on her course and turned round on her course to Marine City.

Q. Could you see any men on the Mayflower or Dove before the collision?

A. No, sir.

Q. In answer to Mr. Brown's question a little while ago, you said you knew Mr. Newcombe?

A. Yes, sir.

Q. How long have you known him?

A. About sixteen or eighteen years.

Q. Do you know his reputation up there for truth and veracity?

A. Yes.

Q. Now what is his reputation, good or bad, for truth and veracity?

A. It is bad.

(Objected to as not proper redirect.)

Recross-examined:

Q. If they had blown any whistles you would have heard them?

A. Yes, sir; and I should have recollected if I did not hear any whistle.

Q. Newcombe was out that night spearing fish?

A. I did not see him; that is why I call him a perjurer. There
459 was not nobody out spearing fish that night. I got $6.50 to pay my expenses coming down; I was promised nothing; it was not for that I came, but to do justice. I have never had much trouble with

him, but he is one of the Sons of Temperance, and he is sort of bad man anyhow, and gets drunk; drinks all he can get from morning till night. I have heard a great many say his reputation was bad for truth and veracity; heard my neighbors say so, and Tom Cook; they call him a sort of blackleg. I have heard people say he was not to be believed under oath; I have heard some people——

Q. Who said that?

A. My brother and Tom Cook.

Q. Did they say that, or say that he was a blackleg?

A. Every one calls him a blackleg.

Q. Did they say anything more than that he was a blackleg?

A. He swore that he was American, born on this side of the river; and when his vote was challenged at the town-hall, in Sombre Village, and then he swore he was Canadian-born.

NELSON WOODWORTH, being duly sworn, says:

Q. You were master of the Mayflower in the season of 1869, at the time of her collision with the Dove?

A. Yes, sir.

Q. And you were once before sworn in this case?

A. Yes, sir.

Q. The mate had charge of the propeller when you first entered the river?

A. Yes, sir.

Q. Whereabouts in the river did you go onto the pilot-house?

A. From an eighth of a mile to a mile above Bowen's dock.

460 Q. Captain, look at the map now before you. What does it represent?

A. It represents the St. Clair River from Marine City to a point somewhere below St. Clair City.

Q. Are you familiar with the localities along the river there?

A. Yes, sir, I am. I live at Marine City.

Q. Will you point out Bury's dock—Tom Bury's dock?

A. Yes. (Witness points it out, and commissioner marks it "T. Bury.")

Q. Point out John Bury's dock.

A. That I suppose to be John Bury's dock. (Witness points it out, and commissioner marks it "John Bury.")

Q. What is the next dock above?

A. Gray's dock—so known at the time the collision took place. (Witness points it out, and commissioner marks it "Gray.")

Q. What is the dock next Gray's dock called?

A. I cannot tell you. I have heard the name, but disremember it now.

Q. Do you know Waldron's dock?

A. Not unless the dock next above Gray's dock is it. I think it is.

Q. Do you know Mr. James B. Newcombe?

A. I do.

Q. Will you point out about where you think he lives?

A. Yes, sir. There. (Witness points out the place marked "Newcombe" by commissioner.) He had a shingle-factory about there.

Q. What is the dock next above Waldron's dock?

A. Reynolds' dock.

Q. Point it out.

461 A. There. (Witness points out place marked "Reynolds" by commissioner.)

Q. And what is the dock above Reynolds'?
A. I have always known it as Bowen's dock. (Witness points it out, and commissioner marks it "Bowen's.")
Q. And what is the dock next above Bowen's?
A. I have always heard it called Haughan's. (Witness points it out, and commissioner marks it "Haughan's.")
Q. Point out Recor's dock.
A. There. (Witness points out dock marked on map "Record's dock.")
Q. You have stated that you were on the pilot-house above Bowen's dock?
A. Yes, sir; it was above both Bowen's and Haughan's dock.
Q. After you went on the pilot-house did the mate have anything further to do with the navigation of the boat?
A. No, sir.
Q. Do you recollect seeing a light——
(Mr. Brown objects as leading.)
on either dock, Brown's or Houghan's?
A. Yes, sir.
Q. How did it bear when you first saw it?
A. From two to four points off my port bow.
Q. About how far from the dock where the light was did you pass?
A. One hundred and fifty feet or thereabouts as near as I can remember.
Q. What did you see about the dock?
A. There was spiles between me and the lamp on shore.
Q. Was this lamp you speak of the light you saw?
A. Yes, sir.
462 Q. Was the light you speak of on the shore or on the dock?
A. I could not say; I judged it to be a light in a boat and the boat on the beach from the way I saw the spiles between.
Q. What kind of a light?
A. A white light.
Q. Was it a boat-light or fish-light, do you suppose?
A. I supposed it to be a fish-light in a boat.
Q. Whereabouts were you when you next saw this light?
A. If my memory serves me right, and I think it does, we had passed it one hundred and fifty or two hundred feet when I saw it off my port quarter, at an angle of about two points off my port quarter from directly astern.
Q. When you last saw it had you or had you not passed Bowen's dock?
A. We had passed Bowen's dock when I saw it the last time.
Q. And about how far above Reynolds' dock were you when you last saw it?
A. About an eighth of a mile below Bowen's dock, half a mile above Reynolds' dock, is the best of my recollection of distances now.
Q. Do you know the distance from Reynolds' dock to Bowen's dock?
A. About three-eighths of a mile, as my memory serves me now.
Q. I understand you to say you had passed Bowen's dock when you last saw the light?
A. Yes, sir.
Q. Were you on the pilot-house; did you remain on until after the collision?
A. Yes, sir, I did.
463 Q. Did you at any time see this light over your starboard quarter?

A. No, sir.

Q. Which shore, if either, did you see after you lost sight of this light?

A. The Canadian shore.

Q. Will you state whether you saw Reynolds' dock as you passed down?

(Objected to as leading.)

A. I did, distinctly.

Q. About how near to that dock were you?

A. About two hundred feet, maybe less, nothing over.

Q. Did you see the American shore as you passed down below Reynolds' dock?

A. No, sir.

Q. Do you recollect whether you saw it at any time after you went on the pilot-house?

A. I recollect I did not.

D. Look at this map marked "Dove vs. Mayflower, Newberry, Pond & Brown." Look at the line drawn from point marked "Mayflower ported" to point marked "Place of collision," and state whether if you had run the course indicated by that line you could have seen the Canada shore that night.

A. No, sir, I could not have seen it. It was all I could do to see it running it as close as I could possibly run it.

Q. Could you, in your opinion, have seen the American shore if you had run the course indicated by that line?

A. I think I could have seen it down just above Ricord's dock, about here. (Com'r marks place "XB.")

Q. With your wheel amidships, what would be the effect of backing your engine *on* the direction of the bow of your boat?

464 A. It would swing her head to starboard and stern to port.

Q. Was your engine moving after the collision, and until the Dove grounded?

A. No, sir; my engine was immediately stopped when the vessels first touched, came together, and was not started either ahead or astern until the Dove was on the bottom.

Q. In your former testimony, you say that you offered to pull the Dove ashore after the collision?

A. Yes, sir.

Q. Did you see the shore when you made this offer; if so, which shore?

A. I did see the Canada shore distinctly.

Q. How were you then heading as to the shore?

A. I should say about east, directly for the Canada shore.

Q. On to which shore did you intend to pull the Dove when you made the offer?

A. The Canadian shore, certainly.

Q. After you saw that the Dove was ashore, what was the first signal given to your engineer?

A. To back her.

Q. Why was this?

A. Because she lay her head right in on the Canadian shore, and I was obliged to back her right off into the river from an eighth to a half of a mile, to get her so I could swing her head down the river.

Q. What was the next signal after the signal to back?

A. To stop her.

Q. And then what order did you give the man at the wheel?

A. To put his wheel hard aport, as soon as she had stopped, and then I rang the engineer to go ahead.

Q. Which shore did you keep after the collision down to Marine City?

465 A. Canadian shore, mostly.

Q. After the collision, was the course of the Mayflower down the American shore?

A. No, sir.

Q. How near John Bury's dock did you pass?

A. From two hundred to four hundred feet.

Q. What was the speed of the Mayflower when you went on the pilot-house above Haughan's dock?

(Question objected to, witness having testified to this before.)

A. From two to four miles an hour; not to exceed four nor less than two.

Q. State whether you had passed Raynolds' dock at the time you rang to go ahead a little stronger.

A. Yes, sir.

Q. If at that time you had forty pounds steam, how far would you have run before you had worked up to fifty-five pounds?

A. From three to five or seven miles. It would depend on the quality of wood we had.

Q. Was it your custom to stop at Marine City as you came down the river?

A. Yes, sir.

Q. Now, what was your custom coming down the river to Marine City, as to raising or lowering your steam?

A. My custom is to notify the engineer a mile or a mile and half off, that we are going to stop, so that he can govern his steam accordingly, and then my engineer lets his steam run down.

Q. You have been in the habit of navigating the river in dark and foggy nights similar to the one on which the collision took place?

A. Yes, sir; for the last thirty years.

Q. And you are acquainted with the custom as to speed in navigating at such times?

A. I think I am.

466 Considering the fog that night, what would be called moderate speed?

(Objected to as involving a question of law.)

A. Four miles an hour for the Mayflower, and vessels of her capacity.

Q. How is the bow of the Mayflower, bluff or sharp?

A. Rather sharp for a propeller.

Q. How does it compare in that respect with the bow of the Dove?

A. The Dove is the sharpest.

Q. How old a boat is the Mayflower?

A. Between twelve and fifteen years old.

Q. At this time had she been rebuilt?

A. Yes, sir; below.

Q. Supposing the Mayflower to have been running at full speed and the Dove was at a stand-still, and that the boats met end on, or nearly so, within 190 or 200 feet from the American shore, what would have been the result of the blow, of the collision?

A. She probably would have cut the Mayflower through and through, and we would have shoved the Dove astern from 100 feet to two hun-

dred feet, and maybe further. In my opinion, that would have been the result.

Q. State whether, in your opinion, the Dove would have been shoved ashore.

A. I should say the effect would be to shove the Dove right around on the American shore.

Q. Suppose the Mayflower had been running at full speed, the Dove at a stand-still, and that the Mayflower struck the Dove on her port-bow at an angle of about a point, what would have been the result?

A. I think the Mayflower would have gone the whole length of her, right up to her shaft, and shoved her astern at the rate of five miles an hour.

467 Q. Suppose the Mayflower was going at full speed, the Dove at a stand-still, and that the Mayflower struck the Dove from eight to twelve inches abaft the stem of the Dove, on her port-bow, and at an angle of three or four points, what would have been the result?

A. I think she would have cut the Dove square off. There wouldn't have been a splinter of her left in the course of the Mayflower as she crossed her bow.

Q. What effect would it have had on the *cross* or heading of the Mayflower?

A. The Mayflower might have swung off from one to two points. It might have varied her course that much, and it might not have done so at all. She might have walked right over her course.

Q. In your opinion, if the Mayflower had been going at full speed, and the Dove at a stand-still, would the effect of the collision have been to have turned both boats so that they would have headed toward the Canada shore?

(Objected to as leading.)

A. Certainly, it would turn both their heads towards the Canada shore.

Q. Would it turn them toward the Canada shore in the manner which you say they headed, square on to the Canda shore, if the Mayflower had been running at full speed and the Dove at a stand-still?

A. I say no.

Adjourned until nine o'clock, October 19, 1872.

WITNESS—I wish to correct my statement as to where Newcomb lives. I mean to say he lives below the place I pointed out, from one to two hundred feet; I should think two hundred feet at all events. The place I pointed out is the location of his shingle-mill.

Q. You say that if the Dove had been at a stand-still and the Mayflower running at full speed, the effect of the collision would have
468 turned the boats toward the Canada shore. How much would it have turned the Mayflower toward the Canada shore?

A. I want to know the angle of the vessel—of the two vessels.

Q. Suppose they hit just as you say they did strike in the river—how much would it have turned the course of the Mayflower toward the Canada shore, suppose she was running at full speed, the Dove at a stand-still?

A. It would not have turned the Mayflower at all; it wouldn't have changed her course at all.

Q. Considering the fog that night, where could the lookout best discover approaching lights, on the promenade-deck forward, or on the pilot-house?

A. On the pilot-house.

Q. How near the stem of your boat dose the pilot-house stand?

A. From twenty-five to thirty feet—may be a little more, a trifle—in the neighborhood of thirty feet.

Q. Is any part of the stem of this boat iron?

A. Yes, sir.

Q. If so, how much?

A. There is a strip of iron over the front part of the stem about five inches wide and an inch thick, running from the bottom to the top of the stem.

Q. Perpendicularly?

A. Yes, sir.

Q. How is that fastened on?

A. Bolts directly through the stem.

Q. How was this stem fastened on—strapped on?

A. By bolts going into the stem and pieces of iron lapped back on the vessel and coming up on this iron strap.

Q. State whether the first mate remained with you on the pilot-house from the time you took charge of the vessel up to the collision.

A. He did.

469 Q. What was he doing there?

A. Looking out; prepared to see anything he could see, and assisting me in piloting the vessel.

Q. What was the draft of the Mayflower that night?

A. About twelve feet and a half, aft.

Q. How much forward?

A. Twelve feet forward.

Q. Do you know what the draft of the Dove is?

A. I don't.

Q. You are acquainted with the vessel, are you not?

A. I am.

Q. What, in your opinion, was her draft at this time?

(Objected to by Mr. Brown—the witness stated he does not know.)

A. From six to seven feet; I should say from five to seven feet.

Q. Was there a light in the binnacle that night?

A. Yes, sir.

Q. Could you see the compass?

A. Yes, sir.

Q. Did you observe the compass as you came down, after going on the pilot-house?

A. Yes, sir.

Q. Could you observe by the compass that night, whether the boat was kept steady and whether she swung in one direction or the other?

A. Yes, sir.

Q. Did you observe the compass as you came down?

Q. Yes, sir.

Q. For what purpose?

A. For the purpose of navigating the vessel.

Q. Do you mean to say you run by compass course?

A. Not wholly.

Q. To what extent do you use the compass?

470 A. If I lost my object ahead that I was steadying the vessel for, I that moment put my eye on the compass, and she was kept steady that way until I got something on the land to steady the vessel by.

Q. Are you acquainted with the course usually run on nights like this

where you are keeping the Canada shore down by Reynold's dock, and from there to Gray's dock?

A. I am.

Q. About what is that course?

A. From Reynold's dock to Gray's dock, a south course would carry them clear, if you were in the middle of the river.

Q. Suppose you were two hundred feet from Reynold's dock?

A. It would bring her on to the land a half mile below Reynold's dock.

Q. If the vessel had swung to starboard so as to have brought her within one hundred and ninety or two hundred feet of Ricord's dock, on the course down, would you have discovered the fact form the observation of the compass?

A. Yes, sir.

Q. How much could she have swung, or how little could she have swung without your knowing it?

A. She could not have swung an eighth of a point.

Q. Are you acquainted with the bank below Ricord's dock, say from an eighth to one-fourth of a mile?

A. Yes, sir.

Q. How is that bank—how does the depth of water vary?

A. From the water-line out about sixty feet—forty-five to sixty feet—the water is very shoaly. You will find four feet of water, and in six feet from there out you will find twelve; drops right off into deep water. I sounded it myself not a great while ago.

471 Q. State where a course north-by-east would carry you from a point marked here on the map "6"—where would that course take you, inside or outside Ricord's dock?

A. Takes us inside of Ricord's dock.

Q. Do you recollect whether there are spiles running down below Ricord's dock?

A. There is.

Q. About how far do they extend?

A. From twenty-five to fifty feet.

Q. Running on the course north-by-east from the point marked "6" on the map, could you learn to clear these spiles?

A. No, sir.

Q. How far inside of those spiles would it carry you—how far about; I don't care for the exact measurement.

A. Fifty feet; fifty to seventy-five from the front of the dock.

Cross-examination by Mr. Brown:

Q. How far is Bowen's dock from Ricord's?

A. It is over a mile.

Q. About what is the current in the river there?

A. I suppose it to be about three miles.

Q. How long would it take you to run a mile down the river at the speed you were running that night?

A. I was running about four miles an hour; figure that up and I can answer it; my head is rather mixed up. We were passing the water probably from the time we passed Bowen's dock until I stopped and reversed her; four miles an hour we might have been going through the water.

Q. That with the current would give you a speed of seven miles?

472 A. Yes, sir. I suppose passing the land at seven miles.

Q. That would be a mile in about nine minutes?

A. Yes, sir; about that.
Q. How far above Bowen's dock was it you took charge of the deck?
A. Some point between Bowen's dock and St. Clair.
Q. How far is it from Bowen's dock to St. Clair?
A. I can't say; I never measured it.
Q. How far should you think?
A. It is from three to four miles.
Q. Didn't you swear on the former examination that it was three-quarters of an hour before the collision that you went on deck?
A. I am not so certain about that.
Q. Who was acting as your lookout?
A. A man named Glover was acting in that capacity at the time.
Q. What time?
A. At the time of the collision; he was one of the persons acting in that capacity.
Q. Why did you go on deck at that time; was it your watch?
A. I had been on deck all night, from the time we came into the river, off and on, walking on deck.
Q. Whose watch was it, yours or the mate's?
A. It was the mate's.
Q. Who had command of the deck?
A. The mate had command of the deck when the boat came into the river St. Clair.
Q. How many times did you go below after she came into the river?
A. I can't say; I didn't go off the promenade deck at all to my recollection now; sleep on the promenade deck, eat on the promenade deck.
Q. Did you go in your room?
473 A. I might have gone in the cabin passing down the St. Clair.
Q. Where did you come from when you came on the hurricane deck, above Bowen's dock?
A. From the promenade deck.
Q. What part?
A. Forward.
Q. What had you been doing?
A. Keeping lookout.
Q. How long had you been there?
A. Most of the time coming down the river, from the time the vessel came into the river.
Q. How long before that were you in the cabin?
A. I cannot say, I don't know as I was at all.
Q. During the time you were on the promenade deck who had charge of the navigation, you or him?
A. The mate did up to the time I went on to the pilot-house.
Q. Did you relieve him of his command then?
A. I did.
Q. Did you notice whether the fog was denser on one side?
A. I did.
Q. On which side was it denser?
A. On the Canada side, I should say, when we got down below Bowen's dock.
Q. And from that time until the collision?
A. Yes, sir.
Q. The fog was denser on the Canada side?
A. It appeared to be denser on the American side, I mean.
Q. Where were you standing when the mate first discovered the light on Bowen's dock?

A. On my pilot-house.

Q. Could you see the outlines of the dock?

A. Yes, sir.

474 Q. How many times did you look at the light?

A. I can't say; I saw the light distinctly; I can say I looked at it three times, certain.

Q. The last time you saw it, you say it was two points off your stern?

A. About that; two off my port quarter from directly astern, as near as my memory serves me now.

Q. How came you to be looking for the light astern of you?

A. I was looking for all lights I could see, and everything else I could see.

Q. How many times did you turn around to look at the light?

A. I can't say.

Q. Who first discovered the light of the Dove?

A. I probably did myself. The mate and I stood there together; we probably both discovered it about the same time.

Q. Had it been reported by the lookout?

A. No, sir; I stood above the light and could see before anybody else could see aboard the vessel.

Q. How long had you been running under check when you came on deck?

A. I could not say; she was running under a check when I came on deck.

Q. About where were you when you gave the order to go ahead a little faster?

A. Probably a thousand or fifteen hundred feet above Gray's dock.

Q. What bell did you ring?

A. I rang four bells; I blowed four whistles; we work our engine with a whistle.

Q. Was that the boat's whistle, or a small whistle?

A. A small whistle.

Q. What was your signal to go ahead at full speed?

475 A. Five or six bells; we often didn't ring but four leaving dock here; I mean whistles.

Q. When you were running under check did you have more than one signal for increasing the speed?

A. Yes, sir; we did.

Q. What were the signals?

A. Four or five bells; four bells was "all right, go ahead;" and five signals was "all right, let her rip, hurry up."

Q. What was six?

A. That was "let her go like damnation."

Q. Do you mean to say that in the actual navigation of that boat, you have more than one signal for going ahead faster while you were under check?

A. I mean to say I often rang more than one signal.

Q. But in the actual navigation of that vessel, was there any difference between four and six bells; didn't you ring just as many as came handy?

Q. Was there any actual difference between them?

A. Yes, sir; going over the flats, if they were working strong and I wanted them to work a little stronger, I rang five or or six bells, like that, [illustrating.] "Pull out your plug."

Q. Wasn't the signal you gave the engineer, a signal to increase from a check to an ordinary speed?

A. Yes, sir.

Q. Are you able to state with any accuracy the distance you passed from that light, on that foggy night?

A. I think I am.

Q. Is it possible to tell the distance—I ask you as a seaman—is it possible to tell the distance of a light in a foggy night?

A. As plain as that was seen between the spiles and as close as I was watching the land, and consulting my mate, we could come very near it, sir, very near it.

476 Q. What is the ordinary running speed of your boat?

A. Eight and a half or nine miles an hour.

Q. That is passing through the water?

A. Yes, sir; eight to eight and a half.

Q. Was there any other order given to the engineer before the collision, after the order to let her out?

A. Yes, sir.

Q. What was the order?

A. To stop, then back.

Q. Was that the only other order?

A. Yes, sir.

Q. That was after you made the light on the Dove?

A. Yes, sir; immediately on seeing the Dove's light, my engine was stopped and backed.

Q. Did you ring to slow, before to stop and back?

A. No, sir.

Q. What is the signal to stop?

A. One bell.

Q. What is the signal to back?

A. Two.

Q. Can you keep steerage-way on a propellor running down a current three miles an hour, at a speed of two miles?

A. Yes, sir; passing the water two miles in still weather.

Q. About what angle do you claim the vessel struck?

A. At an angle of about eighty degrees, I judge it struck.

Q. What was the effect of the blow on the course of the Dove?

A. It had no effect at all on the Dove, hardly; it did not shift the Dove's course, not a point, as the Mayflower was nearly at a standstill.

Q. What effect did it have on the course of the Mayflower?

477 A. It slewed the Mayflower directly around for the Canada shore; directly around so she headed for the Canada shore, and we both lay heading for the Canada shore at the end of the collision, side and side, both engines stopped; and we continued to lay there until the Dove backed away astern of me.

Q. What is the compass course from Hawkins' dock to Ricord's, can you tell?

A. I can guess; southwest-by-west, as near as I can get at it.

Q. Do you tell that by recollection, or from looking at the map?

A. Merely supposition; I never looked across there that I know of.

Q. Do you not tell that by looking at the map?

A. Mostly; I should have judged it was about that course.

Q. Is there not a variation in the compasses of different vessels?

A. Oh, yes.

Q. How much do they vary from the actual course?

A. From a quarter of a point to a point.
Q. It depends on the compass?
A. It depends on the compass and the setting of it.
Q. What year was this collision?
A. '68, I think; '68 or '69.
Q. Are you able after the lapse of four years to swear positively as to the distance you passed from these docks?
A. I think I am, and shall be able to as long as I have life.
Q. Can you, in a foggy night, tell the distance at which you are looking at a light?
A. Not exactly; not to the inch.
Q. Can you do anything more than guess at it?
478 A. Oh, yes.
Q. Can you tell, in a clear night, whether a bright light is half a mile or a mile off?
A. Under different circumstances, I can.
Q. What circumstances?
A. For instance: I am in the River St. Clair; it is only about five-eighths of a mile across there, and I am running as close as I dare to the Canada shore; I see a light on the Canada shore; I know that I am close to the Canada shore from the looks of the bushes and docks as I pass along, the spiles sticking up; watching as close as I can, if I see a light in on the beach, I know pretty near how far I am from it.
Q. I mean when you see nothing but the light, can you tell the distance?
A. Do you mean this light to be placed upon land or upon water; for instance, I am in the middle of the lake.
Q. Yes, and see a light.
A. I can't tell anything about the distance, anything positive.
Q. Then you can only tell the distance of the light, by seeing other objects besides the light?
A. And knowing that the river is only so far across, and that I am just as near the Canada shore as I dare get my vessel, for fear she gets aground.
Q. Suppose you can't see the shore at all.
A. I can calculate that, if I am not over five-eighths of a mile distant, I am close on the American side; I can guess very near, very close to the distance of a light in St. Clair River, passing it either on one side or the other.
Q. Suppose the light is ahead.
A. I can't tell so well.
Q. Can you make any estimate at all of the distance, when you see nothing but the light?
479 A. Oh, yes; I know you can't see an ordinary light, except the fact, you can see an ordinary light a certain distance.
Q. How can you tell?
A. By the brightness of the light.
Q. Don't different lights vary in brightness?
A. Oh, yes.
Q. Then, how are you able to tell by the brightness?
A. If a light looms up bright, I say that light is not a great ways from me; if it is a little dim, I say it is still farther from us.
WITNESS. I want to make an explanation with regard to the whistles. Do you want to hear what I am about to say?
Q. Yes.
A. I am about to say, that my engine did not make over five or six,

not to exceed eight, turns ahead under the fast bell. when this light loomed up ahead. And I instantly stopped her, and reversed my engine, and my mate induced me to go ahead faster; he says to me that the Dove is so far by, she is all clear, you can go ahead. "I would go ahead," says he, "if I were you." I rang to go ahead, and she made four to six or eight turns ahead when I saw the Dove's lights, and I immediately stopped her, and reversed her engine. That is the only explanation I want to make.

Redirect by Mr. Canfield:

Q. In regard to the variation of the compass, I understand you to say that a compass may vary from the correct meridian how many points?

A. Our lake compasses get out of order and vary from one-quarter to a point, often, in different places.

Q. Do you mean they vary from each other or from the correct and meridian?

480 A. Vary from each other.

Mr. BROWN. And from the true meridian?

A. And from the true meridian, of course.

Mr. CANFIELD. Of what practical use would the compass be if it varied over a point?

A. Of very little.

Q. Would it not be discarded?

A. I think it would; I should discard it.

Q. Discarded by careful navigators?

A. I should say it was unfit to use.

Q. You stated, in your cross-examination, that you could see the light of the Dove sooner than any other person on the boat.

A. I think I could from the position I stood in, I and my mate.

Q. Had the mate the same opportunity of seeing that you had?

A. He had.

Q. Did you ever run the course from Hawkins' dock to Ricord's dock with the Mayflower?

A. The question I don't understand.

Q. This is Hawkins' dock.

A. Yes, I understand.

Q. Now, coming down the river, did you ever run the direct course from Hawkins' dock to Ricord's dock?

A. I have run down the river there a great many times.

Q. With the Mayflower?

A. In the Mayflower. I don't recollect ever being in a fog before right at that particular place, but we generally keep the center of the river coming down.

Q. And on foggy nights which side do you keep?

A. We keep generally about the middle of the river, unless there is some signal from a vessel on the starboard or port bow; for in-

481 stance, a boat blows her signal off the starboard-bow, we keep closer to the Canada shore.

I find, on consulting the map, that I was in error as to distance between Bowen's and Reynolds' dock. I must have been about a quarter of a mile above Reynolds' when I last saw that fish-light on Hawkins' dock.

NELSON WOODWORTH.

482 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to

adjournment at the district court-room in the city of Detroit, on Monday, the sixteenth day of December, in the year one thousand eight hundred and seventy-two. Present, honorable Holmes H. Emmons, circuit judge.

THE RIVER AND LAKE-SHORE STEAMBOAT Line, owners of steamer Dove, libellant and appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &c., H. Norton Strong, claimant & appellant.
} On appeal from U. S. district court. In admiralty.

The appellant now moves the court, upon the petition therefor filed to amend the cross-libel in this cause, and the appellees object thereto, on the ground that the court has no power to order such amendment; that the decree dismissing said cross-libel was not appealed from; that the time for making such appeal has passed, and that said pleading called a cross-libel is in a separate cause, and is not brought here by an appeal in this case: Whereupon it is ordered by this court that the appellant be permitted to amend his cross-libel by inserting therein an averment of the filing the original libel by the appellee, describing the same, and that the cross-libel is for the same wrong and cause of action as set forth in said original libel.

483 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in the city of Detroit, on Monday, the sixteenth day of December, in the year one thousand eight hundred and seventy-two. Present, honorable Holmes H. Emmons, circuit judge.

THE RIVER AND LAKE-SHORE STEAMBOAT Line, owners of steamer Dove, libellant & appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &c., H. Norton Strong, claimant & appellant.
} On appeal from U. S. district court. In admiralty.

This cause coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, is argued in part by counsel on either side, and continued for further argument.

484 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room in the city of Detroit, on Tuesday, the seventeenth day of December, in the year one thousand eight hundred and seventy-two. Present, honorable Holmes H. Emmons, circuit judge.

THE RIVER AND LAKE-SHORE STEAMBOAT LINE, owners of steamer Dove, libellant & appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &c., H. Norton Strong, claimant & appellant.
} On appeal from U. S. district court. In admiralty.

This cause again coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, is argued in part by counsel on either side, and continued for further argument.

485

486 UNITED STATES OF AMERICA:

In the circuit court of the United States for the eastern district of Michigan. In admiralty.

Amendment filed by leave of the court to the libel of H. Norton Strong, libellant, against the Steamboat Dove, her tackel, apparel, and furniture, and all persons intervening for their interest therein, filed in the district court of the United States for the eastern district of Michigan, in admiralty, on the second day June, A. D. 1869, and now pending on the appeal in the circuit of the United States for the eastern district of Michigan, in admiralty, this amendment to stand as the first article of said libel.

First. That heretofore, to wit, on the 17th day of June, A. D. 1869, the River and Lake Shore Steamboat Line, as owners of the steamer Dove, filed its libel in this court against the Steam-Propeller Mayflower, her boats and tackle, apparel & furniture, and against all persons lawfully intervening for their interest therein, to recover damages, by reason of a collision between said Dove and said Mayflower, on the 31st
487 day of May, 1869, charging that said collision was wholly occasioned by the fault of said Mayflower, her officers and crew; that this libellant, who was then *was* the owner of the Mayflower, intervening for his interest therein, has appeared and filed his answer to said original libel, denying all the charges therein of fault on the part of the Mayflower, her officers and crew, and averring that said collision was wholly caused by fault on the part of the Dove, her officers and crew, and that said original libel is now pending and undetermined; that said Strong now comes and files this as his cross-libel to recover damages suffered by said Mayflower, and by him as the owner thereof, by reason of said collision, and that said collision is the same and only cause of action set up in said original libel, and this cross-libel is filed upon the same collision, *and upon the same collision*, and upon no other cause of action.

(Signed) H. NORTON STRONG,
Claimant and Libellant under Cross-libel.
By F. H. CANFIELD,
His Proctor.

(Signed)
F. H. CANFIELD,
Proctor for H. Norton Strong.

Filed in open court, Dec' 17th, 1872.
(Signed) A. MANDELL, *Clerk.*

488 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in the city of Detroit, on Wednesday, the eighteenth day of December, in the year one thousand eight hundred and seventy-two. Present, honorable Holmes Emmons, circuit judge.

THE RIVER AND LAKE SHORE STEAMBOAT LINE, owners of steamer Dove, libellant & appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &c., H. Norton Strong, claimant & appellant.
} On appeal from U. S. district court. In admiralty.

This cause again coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, is argued in part by counsel, and continued for further hearing.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in the city of Detroit, on Thursday, the nineteenth day of December, in the year one thousand eight hundred and seventy-two. Present, honorable Holmes H. Emmons, circuit judge.

489 THE RIVER AND LAKE SHORE STEAMBOAT Line, owners of steamer Dove, libellant and appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &C., H. Norton Strong, claimant & appellant.
} On appeal from U. S. district court. In admiralty.

This cause again coming on to be heard on appeal from the district court of the United States for the eastern district of Michigan, the arguments of counsel are concluded and the cause submitted for decision.

490 The circuit court of the United States for the eastern district of Michigan. In admiralty.

THE RIVER & LAKE SHORE STEAMBOAT LINE
vs.
THE PROP. MAYFLOWER.

It is hereby stipulated that upon argument of the questions arising upon the supplemental libel in said cause and the answer thereto, the following facts shall be admitted:

1st. That the libel filed by H. Norton Strong against the Steamboat Dove was the libel referred to in his answer to the libel of the said steamboat line, and therein denominated a cross-libel.

2nd. That whether the decree dismissing the libel of the said Strong has been suspended, and removed into this court, shall be left as a question of law to be determined.

3rd. That the facts set forth in the 7th article of the answer to said supplemental libel with regard to the printing of the proofs are true.

491 4th. That said causes were argued before the district court together, but one opinion was delivered, and that the allegations in said 7th article with regard to said opinion and the printing thereof are true.

5th. That whether the suit of said Strong and that of said River and Lake Shore Steamboat Line shall be considered to constitute one cause, is referred to the court upon the above facts, and any other facts disclosed in the record and proceedings which shall be deemed by the court pertinent thereto.

(Signed) NEWB., POND, & BROWN,
Libellants' Proctors.

F. H. CANFIELD,
Proctor for H. Norton Strong.

Filed in clerk's office Dec. 28, 1872.
(Signed) A. MANDELL, *Clerk.*

492 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district-court room in the city of Detroit, on Wednes-

day, the second day of April, in the year one thousand eight hundred and seventy-three. Present, honorable Holmes H. Emmons, circuit judge.

THE RIVER AND LAKE SHORE STEAMBOAT Line, owners of steamer Dove, libellant and appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINE, &c., H. Norton Strong, claimant & appellant;
} On appeal from the district court of the United States for the eastern district of Michigan.

and

H. NORTON STRONG
vs.
THE STEAMER DOVE, HER ENGINES, &C.
} On libel and cross-libel for collision.

And now on this day come the parties, by their respective proctors, and hereupon the counsel for the said claimant and appellant gives the court to understand and be informed that since this cause was submitted for the decision of this court, and before this day, to wit, on the third day of March, A. D. eighteen hundred and seventy-three, the said
493 H. Norton Strong, claimant and appellant, died, and that Thomas Pitts has been duly appointed executor of the last will and testament of the said H. Norton Strong, deceased, which the said proctor for the said libellant doth not deny, but admits the same to be true; and on further motion it is ordered that Thomas Pitts, executor of the last will and testament of H. Norton Strong, deceased, be made and admitted a party claimant and appellant in this cause, and allowed to defend the same.

494 At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Wednesday, the second day of April, in the year one thousand eight hundred and seventy-three: Present, honorable Holmer H. Emmons, circuit judge.

THE RIVER AND LAKE SHORE STEAMBOAT Line, owner of steamer Dove, libellant and appellee,
vs.
THE PROPELLER MAYFLOWER, HER ENGINES, &c., H. Norton Strong, claimant and appellant.
} On appeal from the district court of the United States for the eastern district of Michigan.

and

H. NORTON STRONG
vs.
THE STEAMER DOVE, HER ENGINES, &C.
} On libel and cross-libel for collision.

This cause having been duly argued by counsel on either side, and the record of the court below being seen and inspected and fully considered, it is now by this court considered, adjudged, and decreed that the judgment and decree of the district court aforesaid be, and the same is now in all things, affirmed; and it is further considered, ad-
495 judged, and decreed by this court that the said libellant, the River and Lake Shore Steamboat Line, do recover of and from the said Thomas Pitts, executor of the last will and testament of H. Norton Strong, claimant and appellant, and also of and against his surety on appeal for said appellant, the sum of fifteen thousand two hundred and sixty-one dollars and eighty cents ($\$15{,}261\frac{80}{100}$) damages, being the sum for which judgment or decree in the court below was awarded, with interest to this day, together with said libellant's costs

of suit, both in the district court and in this court, to be taxed by the clerk of this court.

And now comes the said Thomas Pitts, executor of the last will and testament of H. Norton Strong, deceased, claimant and appellant in this cause, and claims an appeal from the judgment and decree of this court therein to the Supreme Court of the United States, which appeal is now allowed by this court, and a bond ordered in the penal sum of thirty thousand dollars from said Thomas Pitts, executor of the last will and testament of said H. Norton Strong, deceased, claimant and appellant, to said libellant and appellee.

496 The circuit court of the United States for the eastern district of Michigan. In admiralty.

THE RIVER AND LAKE SHORE STEAMBOAT Line, owners of the steamboat Dove, appellees, *vs.* THE PROPELLER MAYFOWER, H. NORTON Strong, claimant & appellant. and H. NORTON STRONG, OWNER OF THE PROpeller Mayflower, appellant, *vs.* THE STEAMBOAT DOVE, RIVER & LAKE Shore Steamboat Line, owners & appellees.	On libel and cross-libel for collision.

Know all men by these presents that we, Thomas Pitts, executor of the last will and testament of H. Norton Strong, deceased, and Thomas Pitts, individually and personally as surety, of the city of Detroit, are held and firmly bound unto the above-named River and Lake Shore Steamboat Line in the sum of thirty thousand dollars, to be paid to the said appellee, its successors or assigns, for which payment, well and truly to be made, we bind ourselves and each of us, our and each
497 of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 12th day of April, A. D. 1873.

Whereas the above-named Thomas Pitts, executor of the last will and testament of said H. Norton Strong, deceased, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the circuit court of the United States for the eastern district of Michigan: Now, therefore, the condition of this obligation is such, that if the above-named Thomas Pitts, executor as abovesaid, shall prosecute his appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be & remain in full force and virtue.

(Sgd.) THOMAS PITTS, [SEAL.]
Executor of H. N. Strong, deceased.

(Sgd.) THOMAS PITTS. [SEAL.]

Signed, sealed, & delivered in presence of—
F. H. CANFIELD.

498 We hereby assent to the sufficiency of the foregoing bond, both as to form and substance, and also the surety thereto.

(Sgd.) NEWB., POND BROWN,
Proctors for Appellee.

Filed in clerk's office April 15, 1873.

A. MANDELL, *Clerk.*

499 (Indorsed:) No. 5016. U. S. circuit court east. dist. of Michigan. River & Lake Shore Steamboat Line vs. Propeller Mayflower, & H. Norton Strong vs. Steamer Dove. Copy appeal-bond. Filed in clerk's office April 15, 1873. A. Mandell, clerk.

500 The Supreme Court of the United States.

THE RIVER AND LAKE SHORE STEAMBOAT LINE, owners of the steamboat Dove, appellees,
vs.
THE PROPELLER MAYFLOWER, THOMAS PITTS, executor of the last will & testament of H. Norton Strong, claimant and appellant,
and
H. NORTON STRONG, OWNER OF PROPELLER Mayflower, appellant,
vs.
THE STEAMBOAT DOVE, THE RIVER & LAKE Shore Steamboat Line, claimant and appellees.
} On libel and cross-libel for collision.

To the Supreme Court of the United States:

The petition of Thomas Pitts, executor of the last will and testament of the above-named H. Norton Strong, deceased, respectfully shows that on or about the 17th day of June, 1869, the above-named River and Lake Shore Steamboat Line filed its libel in the district court of the United States for the eastern district of Michigan, in admiralty, against
501 the propeller Mayflower to recover certain damages alleged to have been incurred by a collision between the said Mayflower and the said steamboat Dove; that on the 22d day of June, 1869, said Strong, as owner and claimant of said Mayflower, filed his answer to said libel, and on the same day filed his cross-libel in the same cause, to recover the damages occasioned to said Mayflower by reason of the same identical collision, and alleging in and by his said answer and cross-libel, among other things, that said collision was occasioned solely by reason of the carelessness, negligence, and want of skill on the part of the officers and crew of the said steamboat Dove; that said cause was submitted to the decision of said district court upon the pleadings and proofs therein filed and taken, and said court subsequently entered a decree in favor of said appellees and against said Strong for the sum of $14,114.67, and dismissed said cross-libel; that thereupon said Strong removed said cause by appeal to the circuit court of the United States for the eastern district of Michigan; that while said cause was so pending in said circuit court, to wit, on the 3d day of March, 1873, said Strong died, and by an order of said court your petitioner, as the executor of the last will and testament of said Strong, was admitted to prosecute said appeal in the place of said Strong.

502 That on the 2d day of April, 1873, the said circuit court did make and enter a decree in said cause, whereby said circuit court did order, adjudge, and decree that the said judgment and decree of said district court be in all things affirmed, and that the said River and Lake Shore Steamboat Line do recover against your petitioner, as the executor of the last will and testament of said Strong, deceased, and appellant, and against his surety on appeal, the sum of $15,261.80 damages, being the sum for which the judgment in said district court was awarded, with interest, to the date last aforesaid, together with costs, in both courts to be taxed, which said decree of said circuit court, as your petitioner is advised, is erroneous, and he therefore appeals therefrom, and from the whole thereof, to the Supreme Court of the United States.

Wherefore this appellant respectfully prays that the said decree may be reversed both in respect to said original libel and also in respect to said cross-libel, and that such other decree may be made by this court in said cause as shall be agreeable to equity and good conscience, and that he may be restored to all things which he has lost by said decree. And he will every pray, &c.

THOMAS PITTS,
Executor Estate of H. N. Strong, decd.

F. H. CANFIELD, *Proctor.*
G. V. N. LATHROP, *Of Counsel.*

503 We hereby admit due service upon us of a copy of the within petition of appeal, and we hereby waive the issuing and service of a citation of appeal in this cause.

NEWBERRY, POND & BROWN,
Proctors for Appellees.

Filed in clerk's office April 15, 1873,

A. MANDELL, *Clerk.*

504 Circuit court of the United States for eastern district of Michigan.
In admiralty.

RIVER AND LAKE SHORE STEAMBOAT LINE, owners of steamer Dove, *vs.* PROPELLER MAYFLOWER, THOMAS PITTS, EXR. of estate of H. Norton Strong, deceased, claimant and appellant, and THOMAS PITTS, EXR. OF ESTATE OF H. NORTON Strong, deceased, owner of propeller Mayflower, appellant, *vs.* STEAMER DOVE, RIVER & LAKE SHORE Steamboat Line, claimants.	Libel and cross-libel for collision.

An appeal having been allowed and taken in this cause to the Supreme Court of the United States, the clerk will please make out a transcript of the record therein according to the rules and practice of said court.

F. H. CANFIELD,
Proctor for Appellant.

Filed in clerk's office May 27, 1873.

A. MANDELL, *Clerk.*

505

506 Circuit court of the United States for the eastern district of Michigan.

THE RIVER AND LAKE SHORE STEAMBOAT Line, owners of steamer Dove, libellants & respondents, *vs.* THE PROPELLER MAYFLOWER, HER ENGINES, &c., H. Norton Strong, claimant & appellant, and H. NORTON STRONG, *vs.* THE STEAMER DOVE, HER ENGINE, &C.	Libel and cross-libel.

We hereby stipulate that, in giving copies of the testimony taken in the above-entitled cause to be attached to the record and proceedings on

appeal from the circuit court to the Supreme Court, the clerk may omit the formal portions, authentications, jurats, &c., of each deposition.

Detroit, Oct. 1, 1873.

NEWB., POND & BROWN,
Proctors for Libellants & Respondents.
F. H. CANFIELD,
Proctor for Claimant & Appellant.

Filed in clerk's office Oct. 1, 1873.

A. MANDELL, *Clerk.*

507

508 In case of Dove & Mayflower.

Opinion of Judge Longyear in district court, March 7th, 1871.

Only so much of the pleadings will be stated as is necessary to a proper understanding of the case and for a full development of the points about which there is really any controversy.

The libel alleges that on the 31st day of May, 1869, the Dove was bound on a voyage from Detroit to Port Huron and intermediate points in Canada and Michigan, and at about eleven o'clock at night was proceeding up the St. Clair River, close in on the American channel-bank above Marine City, and just below Ricard's dock, so called; that the night was somewhat foggy, and the Dove was proceeding at a very slow rate of speed and sounding her fog-whistle at short intervals, and in such a manner as to indicate to all approaching steamers that she was proceeding up close to the American-channel bank. That at the
509 same time the Mayflower was coming down the river. That the Dove constantly signalled all steamers that might be approaching to keep to the left by two signal blasts, and when she saw the Mayflower she again gave two blasts of her whistle, stopped and backed, and although close to the American-channel bank, in order to give the Mayflower more room, put her wheel astarboard, and at the time of the collision hereinafter mentioned was nearly or quite at a stand-still. That notwithstanding the efforts of the Dove to avoid a collision, the Mayflower came down upon the Dove, striking her on her port bow and so injuring her that she was in immediate danger of sinking. That to save her from sinking in deep water she was run towards the Canada shore, her bow having been turned in that direction by the collision, where she stranded, filled, and sank.

The faults attributed to the Mayflower are:

1. Officers and crew incompetent and insufficient; not properly stationed, and not properly attending to their duties.
2. Too great speed, proper fog-whistles not given, proper passing signals not given or answered.

510 3. Did not alter her course or check or stop or take any other proper course to avoid a collision.

4. Other errors and faults not known, but prayed to be inserted when discovered.

The claim and answer of H. Norton Strong, owner of the Mayflower, admits the voyage on which the Dove was engaged; that the night was foggy; that the Mayflower was running down St. Clair River; that she struck the Dove; that the latter was in danger of sinking, and did sink, on the Canada side from the effects of the collision, as alleged in the libel. The answer denies all allegations in the libel of fault on the part

of the Mayflower, and charges that the collision was caused solely by the negligence, unskillfulness, and carelessness of the persons navigating the Dove, and not by any fault, negligence, or improper conduct on the part of the Mayflower, her officers, or crew.

The cross-libel alleges that on the 31st day of May, 1869, the Mayflower was bound on a voyage from Chicago to Buffalo, laden with about 15,000 bushels of corn and 1,800 barrels of flour, and at about eleven o'clock at night was proceeding down the St. Clair River; that
511 the Mayflower was moving at a moderate speed under check from the time of entering the river, because the night was somewhat foggy, although both shores were visible from the said boat; that the Mayflower sounded her fog-signals as required by law at the proper intervals; that the Mayflower passed down said river along the Canada shore, because her master was intending to round-to and stop at Marine City, where he lived, and that about said hour of eleven o'clock at night, when about two miles above Marine City, the persons navigating the Mayflower heard a steam-whistle ahead on her starboard hand in the direction of the American shore and immediately replied, sounding two whistles; that an answer of two whistles was received from the approaching steamboat, and that thereupon a succession of from four to six whistles of two blasts back and forth ensued; that the bright light of an approaching steam-craft soon became visible, and shortly after the hull of the approaching steamboat was discovered about four points off the Mayflower's starboard-bow showing her red light; that the
512 approaching steamer (which was the Dove) swung to starboard, heading rapidly, nearly at right angles across the bows of the Mayflower, with her helm apparently hard aport; that the Mayflower immediately rang her bell, stopped, and commenced backing; that in consequence of the manœ'ver of the Dove last above stated, and notwithstanding the efforts on the part of the Mayflower above stated to avoid a collision, the Dove collided with the Mayflower, the stem of the latter striking the Dove on her port-bow about eight feet abaft her stem. That the location of the collision was within a few hundred feet of the Canada bank and near shoal water, which the Dove succeeded in reaching, and then and there sunk.

The faults attributed to the Dove are—

1. Her attempt to cross the bows of the Mayflower and pass her on her port hand, instead of keeping to port on the American side of the river, and passing the Mayflower on her starboard hand, as was her, the Dove's, duty to do under the signals given.

2. The collision was rendered inevitable by the attempt of the Dove to pass to starboard across the bows of the Mayflower, in spite of
513 every effort on the part of the latter to avoid the same.

3. The Dove did not keep her course, which, in ascending, was parallel to the descending course of the Mayflower, nor ring her bell, nor stop, nor back, nor adopt any precaution to avoid the collision.

4. No colored lights, properly trimmed and burning.

5. Officers and crew incompetent, insufficient, and not properly stationed, and not carefully attending to their duties.

6. No proper lookout forward.

The answer of the "River and Lake Shore Steamboat Line," owner of the Dove, to the cross-libel, admitting the fact of collision as alleged, denies all the allegations of the cross-libel as to the manner in which it occurred and cause of the same, and alleges the facts in that regard to be substantially as set forth in the original libel.

The officers and crew of the respective vessels and others were sworn

as witnesses, and a large amount of testimony was taken, which will be noticed in the following opinion so far as may be necessary to a proper decision of the case.

514 Mr. Newberry (Newberry, Pond and Brown) & Mr. Moore (Moore & Griffin) for the Dove.

Mr. A. Russell for the Mayflower.

LONGYEAR, J.

The first important question of fact, and we may perhaps say the vital question to be determined, is as to the place in the river when the collision occurred, whether on the American side of the channel, as claimed on behalf of the Dove, or on the Canada side, as claimed on behalf of the Mayflower.

The fact that a collision occurred is admitted by the pleadings, and is not in dispute, and it is well settled by the proofs that it occurred somewhere in the channel of the river nearly opposite Ricard's dock; and whatever conflict there may be in the testimony as to other points, I believe it may be confidently asserted that there is no conflict as to the following, viz: That the Dove, after leaving Marine City, on the American side, which was on her port side, she was intending to touch next at Ricard's dock, on the same side and only about three miles further up, and that she gave the proper signals, two blasts of her whistle,

515 to indicate that she desired to keep that side of the channel; and that the Mayflower, in approaching Marine City, intended to keep down on the Canadian side of the channel, so as to round-to and touch at Marine City, and that she heard and understood the Dove's signal-blasts, and answered them with the same signal. There is, therefore, no dispute that each fully understood the other as to the side of the channel she intended to keep, and that each acquiesced in that intention; hence it became and was the duty of each to act accordingly, and each had the right to expect that the other would so act. Now, it is clear that the collision could not have occurred on the American side of the channel without the Mayflower having violated her duty to keep on the Canadian side, and hence being in fault; and, on the other hand, it could not have occurred on the Canadian side without the Dove having violated her duty to keep on the American side, and hence being in fault. Hence the importance of determining in the outset the place of the collision.

516 The night was foggy, and at times the fog was so thick that the shores were not visible from the vessels. This was the case especially just before and at the time of the collision. Sometimes the fog would lift so that the shores could be seen for a short time, and then it would settle down again so as to hide them entirely from view. In this state of things it is but natural that there should be some conflict, as there is, in the testimony of the men upon the boats, and also in that of persons on the shore who heard the crash of the collision and saw the lights of the boats soon after, as to the side of the channel on which the collision occurred and the nearness of it to the shore. The evidence of witnesses testifying from sight and hearing under such circumstances is, at best, of a very uncertain character, and in this case it is quite unsatisfactory. We must, therefore, resort to other facts in the case, in regard to which there is no conflict of testimony, and ascertain, if possible, which theory, if either, such facts corroborate.

On leaving the dock at Marine City, or very soon after, the

517 master of the Dove laid her course for Ricard's dock by some trees on the shore at that place which were then visible, which course

was due north by the Dove's compass. She was kept on this course until she came near grounding on the American shore, a short distance, estimated by witnesses at about forty rods, below Ricard's dock. She was then stopped and backed, or at least allowed to swing off under a port helm, further into the channel, and her course was then laid north by east, which course was kept until the collision was inevitable, when, for the purpose of getting a glancing below, if possible, her helm was put hard aport, and the vessels immediately came together. As to these facts, the different witnesses who testified as to them are pretty well agreed. The testimony of Donaldson, acting second mate on the Dove, as to what occurred soon after leaving Marine City, in regard to laying the course of the Dove, is not necessarily in conflict with the testimony of Captain Sloan in that respect. Donaldson testifies that, when Captain Sloan laid the course of the Dove for Ricard's dock, they were near Bury's dock, which is on the Canada side of the river, opposite
518 and a little above Marine City. This does not, in any manner, conflict with Captain Sloan; but, on the contrary, the latter testifies that at the time he laid the course of the Dove for Ricard's dock, he could not only see the trees at that point, but could see the land at Bury's dock; and that, on account of a curve in the river, running straight up from Marine City to Ricard's, a vessel passes nearer Bury's than to the American shore. So Donaldson and Sloan may both be correct, and there be no disagreement.

Besides that, the nearer to Bury's dock we get the Dove on her way to Ricord's, the more favorable for her must have been her situation at the time of the collision, as we shall hereafter see.

There is one other matter to be considered in this connection. It is alleged in the libel that when the Dove saw the Mayflower "she again gave two blasts of her whistle, stopped, and backed;" and then follows this allegation: "And, although close to the American channel-bank, in order to give the Mayflower more room, she put her wheel astarboard." A motion was made at the hearing to amend the libel
519 by striking out this last allegation. The allegation is entirely unsupported by proofs; neither is there any proof directly contradicting it, unless the proof that the wheel was put hard aport after the collision had become inevitable is such. I think it clear, however, from all the evidence in the case, that the wheel was so put hard aport, not for the purpose or with the expectation of avoiding a collision, but that it was done simply to ease the blow as much as possible; while the allegation is clearly one of a manœ'vre to avoid a collision. In other words, the allegation and the proofs are not necessarily contradictory of each other, because there may have been, as alleged, a starboarding to avoid a collision, and, when that failed, then there may have been, as proven, a porting to ease the blow. Therefore, the allegation that the Dove's wheel was put astarboard stands simply as an allegation without proof, and must be disregarded entirely in the consideration of the case. If the fact alleged constituted an essential element in the case without which the remaining allegations must fail to make out a case even if proven, then, of course, the failure
520 to prove that fact would be decisive of the case against the Dove; but such is clearly not the case. The other allegations contained in the fourth article of the libel in which the allegation in question occurs, places the Dove on the American side of the channel, where, under the signals given, she had a right to be; and the allegation that she put her wheel astarboard, to give the Mayflower more room, is simply an allegation of extraordinary caution to avoid a collis-

ion. The Dove's case would, no doubt, be stronger with it than without it; but it cannot be said that in no event could the Dove have or maintain a case without it. And, as has been already shown, the allegation must be disregarded in the decision of the case, even if retained in the libel, and it can, therefore, make no difference in the result whether it be stricken out or retained; but as the libel will be more consistent with the case, as made by the proofs, by striking out the allegation in question than by retaining it, the motion to amend is granted, and so much of the fourth article of the libel as is in the following words, viz, "and although close to the American channel-bank, in order to give the Mayflower more room, she put her wheel astarboard," is stricken out.

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Now, let us return to the question, on which side in the channel of the river did the collision occur? In arriving at a solution of this question we naturally first seize upon such facts in the case having a bearing upon it about which there can be, or is, no dispute. Now, it is indisputable that a short time before the collision the Dove was on the American side, where she came near grounding. If she was on the other side at the time of the collision, how did she get there? The proof shows that at this point the navigable channel is about half a mile wide; therefore, taking the place of grounding as a fixed point of departure, in order to bring the Dove to the place of collision, according to the theory on behalf of the Mayflower, it is inevitable that she must have gone from the place of grounding in such a direction, either diagonally or at right angles with the current, as to have made directly across the channel towards the Canada side, at least eighty rods, to reach the centre of the channel, and then as much further, from forty to sixty rods, as was necessary to bring her to the place of collision, according to the Mayflower's theory, making in all from one hundred and twenty to one hundred and forty rods directly across the channel. Now let us see how this latter conclusion is borne out by the proofs.

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The proofs are entirely agreed that the collision, on whichever side of the river it was, occurred nearly opposite or just below Ricard's dock. The proofs on the part of the Dove shew (and as to this there is no contradiction) that after she got clear of the bank where she came near grounding, she laid her course just one point east of the course she was on from Marine City to the place of grounding; that is, before grounding she was running north; after grounding, north by east. Now let us see where that course would bring her when she should arrive off Ricard's dock, or just below it. Taking the map which was put in proof, and which is believed to be correct, draw a line from a point in the river just in front of the upper end of the dock at Marine City to the place of grounding; then make a set-off out into the channel sufficient to place the Dove at a safe distance from the channel-bank upon which she came near grounding, and draw a line varying one point to the eastward of the former line. When by this latter course we have arrived off Ricard's dock, or just below, we find ourselves but just inside the dock, and far from the centre of the channel towards the American side. If you fix the point of departure of the Dove when laying her course before the grounding nearer the Canadian shore than it is fixed in the above calculation, or near Bury's dock, as testified by Donaldson, it will be seen at once that by the above calculation the Dove would be brought still nearer the American shore at Ricard's.

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The only uncertain element in the above calculation is the distance the Dove swung out into the river after the grounding, and before she again laid her course. As to this we have, and from the nature of the case

can have, nothing but the opinions and estimates of witnesses;
524 a species of proof always uncertain and at best unsatisfactory.

But before proceeding to consider those estimates, and the data upon which they are based, let us ascertain if we can about how far the Dove must have swung out into the channel before laying the course she was on from that time up to the collision, in order to bring her on that course to the place of collision, according to the Mayflower's theory.

By recurring again to the map we see that the course of the Dove after the grounding—no matter where she was in the river when she was put on that course—must have been exactly, or very nearly, parallel with the centre of the channel up to the place of collision wherever we place it. From this it follows inevitably that when the Dove was put on that course she must have been just as far from the centre of the channel as she was at the time of the collision. As I have before remarked, the river at this point is about half a mile wide. At the time of grounding the Dove was on the extreme American side of the
525 channel. Therefore, in order to bring her to the Canadian side of the channel at the time of the collision she must, in swinging off from the American bank, have gone more than half-way, or more than eighty rods, directly across the river before she was put on the course she was on at the time of the collision.

One of two propositions, therefore, must be true in order to get the Dove on the Canadian side at the time of the collision, viz:

1. That the course of the Dove, after grounding, was not as testified by Capt. Sloan, the master, and Robinson, the wheelsman; but, on the contrary, it was at least four points further east than that; or,

2. That the Dove actually swung more than half-way across the river, or more than eighty rods, as above shown, under the port helm, after grounding, and before she was put on her course.

As to the first, there is no conflict in the testimony as to the course the Dove was put on when she was steadied after the grounding and was kept on up to the collision. The master and wheelsman, the
526 two persons on board whose duty it was and who are presumed to know, have testified to that course with a certainty and minuteness of detail which does not admit of the possibility of their being mistaken. The course of the Dove was as stated by them or they have both sworn wil'fully false.

With no evidence in the case in any manner conflicting with theirs, and the witnesses standing fair before the court as they do, the latter conclusion cannot of course be entertained.

As to the second proposition, considering the unanimity of the testimony of all the witnesses testifying upon the point as to the length of time the Dove was kept under a port helm on swinging off from the bank when she came near grounding, and the fact that it was intended to touch at Ricard's dock at so short a distance above on the American side, it is so improbable that the Dove should have swung so far out of her course, that such a conclusion cannot be accepted, unless there is something in some other portions of the testimony to render such a conclusion inevitable.

527 We will now examine the case as made by the Mayflower.

There is no dispute as to the course of the Mayflower until she had got down as far as and a little below Bowen's dock, on the Canadian side, opposite to and some distance above Ricard's dock. Up to this time she had been for some distance running along close to the Canada bank of the channel, but at the point above named her wheel was put aport and she was headed out further into the channel. Josiah Wood-

worth, mate, then on watch and in charge of the navigation of the Mayflower, testifies that it was his intention to head her down the centre of the channel as near as he could. He says, "I told the man at the wheel to keep her steadied to the compass; what point of the compass that was I don't know." Unfortunately, we are left entirely in the dark as to the course the Mayflower was on, and as to where she was in the river at any time from the time she ported to the time of the collision,
except what may be gathered from the opinions of witness' upon
528 the boat, and of others who were upon the shore, founded entirely
upon sight and sounds, and that in a night so foggy that, except at short intervals, nothing whatever could be seen from the boat on either shore.

It is well known how uncertain, unreliable, and often illusive all sights, and especially sounds, are under such circumstances. As is but natural under such circumstances, witnesses vary widely in their estimates and opinions as to the whereabouts and course of the boat. For instance, the mate, J. Woodworth, testifies that when Captain W. Woodworth came on the pilot-house just below Bowen's dock the boat had been headed further out into the stream, and was then steadied, as near as he could judge, right down the centre of the current. At all events, he had manœ'vred the boat with that intention. Capt. W. Woodworth says that at that time he does not think the Mayflower was over one hundred feet from the Canadian channel-bank and that he was keeping as close to it as he could keep. Now, it is clear that under
529 these circumstances the opinion of the mate as to the whereabouts
and course of the boat at that time is much the more reliable of the two. And then, again, there is a remarkable discrepancy in the testimony of these two officers as to the means they had of judging of the whereabouts and course of their boat, creating a still greater uncertainty in these respects at this decisive point. Capt. W. Woodworth says that at this time the Canadian shore was distinctly visible, and, in his own words, "I don't think I was over one hundred feet from the channel-bank, keeping as close to it as I could keep. We proceeded down this shore—the Canadian shore—as close as we could," &c. Mate J. Woodworth, in answer to a question put to him on cross-examination whether Capt. Woodworth, when he came on to the pilot-house, did not say to him, the mate, that he, the captain, thought they were nearer the American shore, says he might have said something of that kind at the time, but I didn't know, and I know no other person could judge at that time where the boat was, either on one side
or the other. He might have said it was at Ricard's dock, but
530 I know he could not know, nor no other living person, on which
side he was;" and in answer to a question whether there was not some conversation between him and the captain about being near Ricard's dock, he said, "Yes, sir; I admit that there was;" and when asked to state the conversation, he said, "I know there was something said about it at the time; he did not and could not see the shore, neither one side nor the other, and I simply told him after he made some remarks, that he had seen this light, (the fishermen's light on Bowen's dock, I suppose,) "that I had steadied the boat down the centre of the river as near as I could." He further says, that this was "right away after he (the capt.) came upon the pilot-house." The witnesses who testified as to the fact are pretty well agreed that at about this time the fog shut down very thick, so that nothing could be seen from the Mayflower on either shore, and that it remained so up to the collision. Under the circumstances I think it highly probable that the mate was correct,

531 and that the captain was mistaken, and that the officers in charge of the Mayflower were entirely uncertain in their own minds as to the whereabouts of their boat in the river, or just how she was heading in reference to the channel.

It is claimed that the captain is corroborated as to the boat being kept near the Canadian-channel bank by the other witnesses who were on the Mayflower and others who were on the shore. All this class of testimony has the same infirmity before alluded to, viz, the great difficulty and uncertainty of being able to judge correctly by sight or sound of distances and courses seen or heard through a dense fog, and it is entitled to but little weight, especially when appealed to for the purpose of rendering certain that of which the officers in charge of the boat, whose duty it was to know, and who were in a far better situation to judge correctly, were themselves absolutely uncertain.

I have carefully examined all the testimony bearing upon the question of the location and course of the Mayflower, and giving it
532 all the weight to which in my judgment it is entitled, I am decidedly of opinion that it falls far short of meeting the case made by the Dove as to the place of the collision.

I find, therefore, as matter of fact, that the collision took place on the American side of the centre of the channel of the river and pretty well in towards the American-channel bank and nearly in front of, or a little below, Ricard's dock, so called; and, as matter of law, that under the signals given and received by and from the respective boats, the Dove was at the time of the collision where she had a right and it was her duty to be, viz, on her port-hand side of the channel of the river, so as to allow the Mayflower to pass her to starboard, and that the Mayflower was in fault in not in like manner keeping her port-hand side of the channel so as to allow the Dove to pass her to starboard. That this fault on the part of the Mayflower was, under the existing circumstances, the cause of the collision is, to my mind, too clear to admit of any reasonable doubt. In the day-time or on a clear night that fault
533 would probably not have been committed, or, if committed, it might not and probably would not have resulted in a collision. But here the night was foggy, the fog being so thick and dense for some minutes before and at the time of the collision as to almost entirely obstruct the sight, and a boat's light could be seen scarcely the boat's length and at no safe distance. Under these circumstances, what was the duty of the officers in charge of a steamer when they became uncertain as to their whereabouts and course in the river, as they did, and were apprised of another steamboat approaching, as they were, on the Mayflower? Clearly, to stop, or at least to check the speed of the boat so as to have her under complete control at any moment until they could ascertain their position and that they were where they had a right to be; bearing in view in this connection that they were moving with the current, and that their boat, being a propeller, could not be stopped, when under even a moderate headway, within a distance much beyond what they could see in that fog even with the utmost vigilance. What did the Mayflower do? Uncertain as to her position and course, with
534 the full knowledge that another steamer was approaching, without even so much as checking her speed, she rushes into the dense, blinding fog, and pushes forward until suddenly the approaching boat looms up out of the fog right under her bows—as some of the witnesses say, as if she had risen right up out of the water—and the collision occurs.

It is contended that when Capt. Sloan of the Dove first saw the May-

flower's light he mistook it for a light at Ricard's dock, which, being on his port hand, would naturally lead him to port his helm so as to bring the light on his port side, and that he did so port, and that but for this the collision would not have occurred. If the Mayflower had been where she had a right to be, and where Capt. Sloan ought to have expected to find her, there would be much force in the argument; but, as we have seen, the Mayflower was where she had no right to be, and far out of the course where Capt. Sloan had a right to expect she was, and it was this that mislead Capt. Sloan as to what the light was;
535 and, therefore, even if he did do what might otherwise have been an error, the Mayflower can claim nothing on account of it. The fact is, however, that this mistake of Capt. Sloan as to the light was of momentary duration, for almost instantly after he discovered the light the Mayflower loomed up out of the fog and was down upon him, and that the porting that he did was after the collision was inevitable. By the law, as it is well settled, the Dove having been put in peril by the fault of the Mayflower, is not responsible for even a wrong order given on the sudden alarm of the moment, provided, as was the case here, there was no time for deliberation and judicious action. (N. Y. and Liverpool U. S. Steamship Co. *vs.* Rumball, 21 How., 383; The Genesee Chief, 12 How., 461; The Pacific, 1 Newb., 15.)

But even if it were otherwise, I think it by no means clear that the porting of the Dove contributed in any manner to the collision.

In this view of the case it is unnecessary to consider any of the other allegations of fault alleged and argued at the hearing.

A decree must be entered in favor of libellants, and referring it
536 to a commissioner to compute the damage, and that the cross-libel be dismissed with costs.

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538 In the case of the Dove and Mayflower.

Opinion of Judge Longyear in district court, April 29, 1872, on exceptions to commissioner's report.

The propeller Mayflower was adjudged to be in fault in a collision with the steamer Dove, and it was referred to a commissioner to ascertain the damages done to the Dove by the collision. The commissioner having made his report, both parties come in and except to it in several particulars. The exceptions will be stated in the opinion of the court.

Mr. Brown (Newberry, Pond & Brown) and Mr. Moore, for libellant.

Mr. Canfield & Mr. Lothrop, for respondent.

LONGYEAR, J.:

The most important of the exceptions, as well in amount as in the principles involved, are respondent's 9th exception, which is to the item allowed by the commissioner for demurrage, 28 days, at $100 per day, $2,800; and respondent's 11th exception, which is to the item al-
539 lowed for value of services of steamer 8th Ohio, 11 days, at $100 per day, $1,100; and libellant's 3d exception, relating to the latter item, which is, that the commissioner reduced the claim for services for the steamer 8th Ohio, it being claimed that a larger amount was actually paid. These exceptions will be first considered.

First. As to the item for demurrage.

The River and Lake Shore Steamboat Line, the libellant corporation,

was, among other things, running a line of steamboats between Detroit and Port Huron during the season of 1869, for conveying passengers and freight. The Dove was owned by libellant, and was running on that line, making daily trips from Detroit to Port Huron and back, at the time of the collision. The collision occurred on the night of the 31st day of May, 1869. The Dove was sunken by the collision, and was raised and brought to Detroit and placed in dry dock and repaired, and resumed her place in line and commenced running again on the 28th day of June, 1869. The time she was so detained from her regular trips was nec-
540 essarily occupied in raising and repairing her; during her detention her place on the line was supplied by other boats belonging to libellant.

Thus far there is no dispute as to the facts, neither is it disputed as a proposition of law, (and in fact the law in this regard is too well established to admit of question,) that libellant is entitled to recover damages for the detention, or, as it is commonly called, demurrage. The question in dispute is as to the proper basis or measure of damage. On behalf of respondent it is contended that in a case like the present the rental or charter value alone is the proper basis and measure of damage; and because it appears by the evidence before the commissioner that at the port of Detroit, the home-port of the Dove, there was no established rental or charter value of vessels like the Dove, and because it does not appear that she could have been chartered during the time of her detention, there is no basis for recovery of damages as demurrage, and that the most that libellant can recover is interest on the value of the vessel during the detention.

541 On behalf of libellant it is contended that because there was no established rental or charter value by which to ascertain the damages for the detention, and at all events because libellant did not keep the Dove for hire, but for libellant's own use and service in the business and employment for which she was intended and in which she was then engaged, the value of such use and service to libellant in that particular business and employment, under the maxim restitutio in integrum, always applied in such cases, is the proper basis and measure of damages for the detention; provided, of course, that such value is susceptible of proof, and is proven to a reasonable certainty.

In reply to this it is contended in behalf of respondent that the proof of such value must, of necessity, be based, as it is in fact in this case, upon probable future profits of such service during the detention, and that future profits, as a basis or measure of damage, are excluded by express authority.

542 To support the propositions contended for on behalf of respondent, the cases of Smith vs. Coudray, (1 How., 28,) and Williamson vs. Barrett, (13 How., 141,) are cited. The first-named case is cited as an express decision of the Supreme Court excluding future profits as a basis or measure of damage for demurrage, and the last-named case as a like decision establishing and limiting the rules of damages in such cases to include the market rental or charter value only, and that where there is no such value established there can be no damages for detention allowed. These cases have been sometimes misapprehended by learned commentators, and to some extent by the learned advocates on both sides in this case. Mr. Conkling (U. S. Adm., 384) and Mr. Parsons (Sh. & Adm., 540, note) both assume that Smith vs. Coudray, which was decided in 1843, decides that the probable profits of the earnings of the vessel during the detention are not allowable as demurrage, and that Williamson vs. Barret', which was decided in 1851, de-

543 cides that such profits are allowable, and thus subverts the former decision and establishes a different rule. As we shall presently see, this is entirely a misapprehension, and that in neither case was the decision what is thus assumed. The questions presented in the two cases were entirely different, and the decisions are in no manner in conflict with each other. What was decided in each case remains the law to-day, unimpaired and unqualified by any subsequent rulings of that court.

In Smith vs. Coudray the vessel detained was laden with salt, and the damages claimed were for a loss or diminution of profits on the cargo in consequence of a declension in the price of salt at the port of destination during the detention. The court held that such damages were not allowable, and that is all the court decided. Such damages were clearly speculative merely, and too remote. The decision of the court excluding such damages was in accordance with what I understand to have been the uniform course of decision of the courts in England
544 and America both before and since, and it is undoubtedly the law to-day. But the court made no decision in that case as the damages for the delay of the vessel—whether such damages are or are not allowable; nor whether the probable earnings of the vessel during her detention, by way of freights, hiring, or otherwise, are or are not allowable. No such question was before the court, and no rule whatever was laid down as to it. All that the court decides is, that probable profits on the cargo which might have been made but for the delay are not allowable. When the court say, (p. 35,) "It is the actual damage sustained by the party at the time and place of the injury that is the measure of damages," they are speaking of the case before them—a claim for probable profits on the cargo, and not of the detention of the vessel, and damages resulting from loss of her use and service as such.

The case of Smith vs. Coudray, therefore, does not reach the
545 present question. In Williamson vs. Barrett the general question of damages for the loss of the use of the vessel during the detention was directly before the court. It was an action at common law for damages by collision on the Ohio River. On the trial in the circuit court the jury were instructed, among other things, to give damages for "the use of the boat during the time necessary to make the repairs and fit her for business." The evidence given to support this claim for damages is not stated; and it does not appear upon what basis the claim was made, whether for rental or charter value or otherwise. The Supreme Court, however, after reciting the instrument, say. "By the use of the boat, we understand what she would produce to the plaintiffs by the hiring or chartering of her to run upon the river in the business in which she had been usually engaged." The court then, after announcing the general rule regulating damages in cases of collision to be the allowance to the injured party of an indemnity to the extent of the loss sustained, and after some discussion in regard to the difficulty in
546 stating the grounds upon which to arrive in all cases at the proper measure of that indemnity, and having arrived at the conclusion that the demand in the market for vessels of the description of the one disabled, and the price there which the owner could obtain or might have obtained for her hire, are proper bases and measure of compensation, proceeds as follows: "If there is no demand for the employment, and, of course, no hire to be obtained, no compensation for the detention during the repairs will be allowed, as no loss would be sustained. But if it can be shown that the vessel might have been chartered during the period of the repairs, it is impossible to deny that

the owner has not lost, in consequence of the damage, the amount which she might have thus earned. The market price, therefore, of the hire of the vessel, applied as a test of the value of the service, will be, if not as certain as in the case where she is under a charter-
547 party, at least so certain that for all practical purposes in the administration of justice no substantial distinction can be made." The point, and the only point, actually decided in that case is, that damages for the detention are allowable, notwithstanding the vessel injured was not under a charter-party at the time of the injury, provided it is shown that she might have been chartered during the detention. That is to say, that it is not indispensable to the recovery of damages for demurrage that the injured vessel should have been under a charter-party at the time of the injury. What the court say in deciding this point as to what is a proper basis or measure of damages in such a case must be read and understood with reference to what they say they understood by the "use" of the boat, as that word was used in the charge to the jury, viz: "what she would produce to the plaintiffs by the hiring or chartering of her." What I understand the court to say is, that in that case and under the general signification of the expression "use of the boat," as understood by them, a proper rule of
548 damages is the rental or charter value of the vessel. I do not understand the court to lay this down as an inflexible and universal rule, applicable alike to all cases where the vessel injured is not actually under a charter-party at the time of the collision. In fact the contrary appears in the course of the opinion of the court. On page 111 the court cite approvingly the decision of Dr. Lushington in the case of the Gazelle, (2 W. Rob., 279,) in which the freight the injured vessel was earning at the time of the collision, less the probable expenses in earning it, was adopted as the measure of damages for the detention. In citing this opinion the Supreme Court remarks: "This rule may afford a very fair indemnity in cases where the repairs are completed within the period usually occupied in the voyage in which the freight is to be earned; but if a longer period is required, it obviously falls short of an adequate allowance. Neither will it apply where the vessel is not engaged in earning freight at the time. The principle, however, governing the court in adopting the freight which the vessel was in the
549 act of earning as a just measure of compensation in the case is one of general application. It looks to the capacity of the vessel to earn freight for the benefit of the owner, and consequent loss sustained while deprived of her service. In other words, to the amount she would earn him on hire." And it was so understood (as not fixing an inflexible rule) by Mr. Justice Catron in his dissenting opinion. On page 114 he says: "The supposition that the amount of damages can be easily fixed by proof of what the injured boat could have been hired for on a charter-party during her detention will turn out to be a barren theory, as no general practice of chartering steamboats is known on the western rivers, nor can it even exist; the nature of the vessel and the contingencies of navigation being opposed to it. In most cases," he says, "the proof will be that the boat could not have found any one to hire her, and then the contending parties will be thrown on the contingency whether she could have earned something or nothing, little or much, in the hands of her owner during the time she was necessarily detained." Here the learned judge describes exactly the con-
550 tingency which exists in the present case; and it is because the decision of the majority of the court is in his opinion capable of being extended to cover such a contingency that he dissents.

The rule that "the party injured is entitled to an adequate compensation for any loss he may sustain for the detention of the vessel," is fully recognized and broadly stated in the opinion of the court. But what would be the proper mode of arriving at such compensation in cases where the vessel at the time of the injury was not earning freight, not under a charter-party, and no demand for the hiring of vessels, and no use for them except by the owners, and therefore no market-rental or charter-value, (as in the present case,) is not discussed or decided. The principle upon which compensation is awarded for marine torts enunciated in this case, as well as in others, especially the Gazelle, (2 W. Rob., 279,) the Clarence, (3 W. Rob., 283,) and other English cases, is broad enough to cover all such cases as those above enumerated, and they are clearly not excluded by any rule laid down in Williamson vs. Barrett, nor in any other case I have examined, and I have ex-
551 amined all the numerous cases cited in the briefs of counsel and some others. If actual loss on account of the detention is made to appear, the case is within the principle, and damages are recoverable. It then only remains to prove the amount. In the Clarence (3 W. Rob., 283) the whole doctrine is very clearly stated. In that case there was no proof of any actual loss, and the court (p. 286) says: "In order to entitle a party to be indemnified for what is termed in this court a consequential loss, being for the detention of his vessel, two things are absolutely necessary—actual loss and reasonable proof of the amount. Both must be proved," &c. And again: "It does not follow as a matter of necessity that anything is due for the detention of a vessel whilst undergoing repairs. Under some circumstances, undoubtedly, such a consequence will follow, as, for example, where a fishing voyage is lost, or where the vessel would have been beneficially employed." And again: "The onus of proving her loss rests with the plaintiff, and this onus has not been discharged upon the present occasion. And [had] the owners of the Clarence proved that the vessel would have earned freight, and that such freight was lost by the
552 collision, the case would have fallen within the principle to which I have last adverted." Under that rule, I think the loss of earnings during detention are clearly allowable; and this, although not actually earning freight at the time of the injury, nor kept for hire, nor under a charter-party, nor any market-rental or charter-value of vessels of like character, nor any demand for the hire of such vessels; provided it is proven to a reasonable certainty that the vessel would have been actually employed by the owner during such detention, and that she would actually have earned the owner something over and above her expenses. What is meant by this is, that such facts are competent as a basis of damages for detention. The difficulty is in making the requisite proof both as to the fact of actual loss and of the amount. But more of that hereafter.

That the Supreme Court so understood the rule, and that no ultimatum was laid down in the case of Williamson vs. Barrett, (13 How., 101,) I think appears with reasonable certainty by the opinion of that
553 court in Sturgis vs. Clough, (1 Wall., 269,) by Justice Grier, in 1863. That was a case of collision. The injured vessel was detained fourteen days while undergoing repairs. The commissioner allowed demurrage on the naked opinions of witnesses as to what the vessel might have earned per day if engaged, unsupported by the exhibit of the owner's books to show what she had actually made previously or afterwards. The district court disallowed the demurrages, and the Supreme Court sustained the decision. The district court did, however,

allow something in consideration of demurrage by way of confirming the commissioner's report as to the amount allowed for repairs, which the court regarded as too much, saying that "the result would be about just between the parties on the whole case." It appears that the injured vessel was a tug-boat, used by her owners in towing vessels to and from sea, about the harbor of New York. In deciding the case, the Supreme Court (p. 272) say: "The court did not decide that demurrage was not a proper item to be allowed in the computation of damages, but that the amount of his decree was a just allowance for all damage sustained by libellant." The force of this language
554 will be understood by reference to the facts of the case in regard to which it was used as above stated. And again: "On reviewing the evidence, we are satisfied that the sum allowed in the decree was 'just between the parties.' The report of the commissioner allowing the whole bill for repairs was not just, because the repairs necessarily made were chargeable not wholly to the collision, but to the age and previous condition of the boat. The charge for demurrage allowed by him was not justified by the evidence, although there was testimony to support it such as can always be obtained when friendly experts are called to give opinions." Thus recognizing that even such testimony as the opinion of experts as to the probable daily earnings of the vessel in her common employment by her owners as competent testimony, although not sufficient alone to justify the allowance, the court then, in the same connection, proceeds: "Besides, the libellant withheld the best evidence of the profits made by his boat, which would be found in his own book[s] showing his receipts and expenditures before the
555 collision." Now, while this can hardly be given the force of a direct ruling upon the question, yet it is not mere dictum, and I think it is not claiming too much for it to say that it is a clear recognition of the doctrine that the probable net earnings of a vessel during detention, under circumstances very much like those of the present case, constitute a proper basis of damages for demurrage, and that the books of the owner showing the receipts and expenditures of the vessel before the collision are not only competent testimony, but constitute the best evidence as to the amount of such probable net earnings.

In the present case the commissioner had before him not only the opinions of several competent experts as to the value of the services of the Dove to her owner per day, but the owner's books, from which tripsheets were made out and attached to the report, showing her daily receipts and expenditures during the month immediately preceding the collision and the month immediately following the resumption of her trips.

Besides the inference above drawn from Sturgis vs. Clough (1 Wall., 269) that the Supreme Court regards probable future earnings allowable as damages for detention in cases of marine tort in
556 cases like the present, we have the positive opinions of Judge Leavitt, late of the southern district of Ohio, in his charge to the jury in Jolly vs. Terra Haute Draw-Bridge Co., (6 McLean, 238,) and Judge Benedict, of the eastern district of New York, in the Cayuga, (2 Ben. Rep., 125,) and of Woodruff, circuit judge, in the same case, (7 Blatchf., C. C., 385,) that such earnings do constitute a proper basis of damages in such cases. See also opinion by Justice Nelson in the R. L. Maybey, (4 Blatchf., C. C., 439.) Such is clearly the rule in England, as has been already shown. See also Lowndes on Collisions at Sea, 154 to 156, and Sherman and Redfield on Negligence, 599.

The subject of future profits as a basis of damages in cases of tort

has undergone a vast amount of judicial discussion and decision in the law courts. A broad if not well-defined distinction between actions ex contractu and actions ex delicto is drawn and recognized in this regard whenever it has been drawn in question. In actions ex delicto it is almost if not quite the unanimous voice of those courts that
557 such profits are recoverable as damages. Not speculative and merely possible profits. Those are never allowed. In order to be recoverable "its source must be ascertained and its extent defined, and its realization must appear to have been reasonably certain;" and I am willing to go further and say its source must be the direct and immediate use or service of [the] thing injured in [or] the prosecution of the business interruption[ed.] The numerous cases cited by counsel from the law courts have been examined by me, so far as within my reach. It would be extending this opinion to too great length to notice them in detail. I shall therefore content myself with a simple citation of some of the leading and more prominent ones: Lacour vs. The Mayor, 3 Duer, 406; St. John vs. The Mayor, &c., 6 Duer, 315; Walter vs. Post, ib., 363; Allison vs. Chandler, 11 Mich., 540; Sewall's Falls Bridge vs. Fisk, 23 N. H., (3 Fost.,) 171; Griffin vs. Culver, 16 N. Y., 489.

The question in this class of cases is, has the owner lost anything by the delay, and if so, how much? The answer to this question determines the right of the owner to recover damages for the detention. And in a case like the present, where the vessel was not kept for hire but was kept for the owner's own use,
558 and where there was in fact no market rental value of vessels and no demand for employment in that way, the answer to be given depends upon the answer to certain other questions: 1st, had the owner use or employment for his vessel during the detention? and, 2nd, how much would she have earned in such use or employment? Under the evidence in the present case the answer to the first question is not difficult. The Dove constitutes one of a line of steamers on a certain route, and upon which she was actually employed at the time of the collision. The libellant corporation continued to occupy that route during the entire time of the detention, and the Dove resumed her place upon it after the detention. At the time of the collision, and in fact during the detention, libellant had virtually a monopoly of the route for both freight and passengers, and the earnings of the Dove upon the route were profitable. Of that use and employment and of those earnings the libellant corporation was deprived by the collision. As to these conclusions from the evidence there is no contest or dispute. Clearly, then, libel-
559 lant is entitled to recover something on account of the detention. How much, depends upon the answer to be given to the question, viz:

Second. How much would the Dove have earned in such use and employment but for the detention? The solution of this question presents some difficulty; it borders so closely upon the boundary line between that which is certain and that which is uncertain, shadowy, contingent, and speculative. That the Dove would have earned something over and above her expenses we have already seen. The difficulty exists in determining how much. The certainty required is not absolute certainty, but reasonable certainty. In the first place, we have the opinions of several respectable boat and vessel owners, placing the value of the use of the Dove to her owner at sums varying from $110 to $130 per day. The opinions of witnesses, as we have seen in Sturgis vs. Clough, supra, (1 Wall., 269,) although competent testimony, is not sufficient alone to determine the amount. But in the present case the books of libellant

were exhibited, showing the gross daily earnings of the Dove for the month of May immediately preceding and for the month of July following the detention, testimony clearly recognized by the Supreme Court in
560 Sturgis vs. Clough, supra, as not only competent, but as the best evidence of the probable earnings of the vessel during the detention; and it is clearly the best evidence of which this case admits. In addition to this the testimony shows that the month of June, during nearly the whole of which the Dove was detained, was the best month of the season. There is no conflicting testimony. It seems to me that the testimony is sufficient from which the value of the use and services of the Dove, and the consequent damages to her owner by her detention, may be ascertained with reasonable certainty. I am free to admit, however, that the question is not free from difficulty and some doubt. But the evidence given being the best the case affords, and being reasonably certain, I think that strict justice requires that the party in fault should bear whatever inconvenience or hardship there may be arising out of the attendant difficulties and doubts. Dr. Lushington, in the case of the Gazelle, supra, (2 W. Rob., 281, 284,) in remarking upon the general question, with great clearness and justice said: "The right against a wrong-doer is for a restitutio in integrum, and this restitution he is bound to
561 make without calling upon the party injured to assist him in any way whatever. If the settlement of the indemnification be attended with any difficulty, (and in these cases difficulties must and will frequently occur,) the party in fault must bear the inconvenience. He has no right to fix this inconvenience upon the injured party; and if that party [desires] derives incidentally a greater benefit than mere indemnification, it arises only from the impossibility of otherwise effecting such indemnification without exposing him to some loss or burden which the law will not place upon him." It is true, this was said against a reduction of one-third new for old, as in insurance cases, in determining the amount due for repairs, but at page 284 the learned doctor expressly applies the same doctrine to demurrage.

The collision occurred on the night of the 31st day of May, and the Dove resumed her trips on the 28th day of June, 1869. The first nineteen days of May her trips were not daily, nor in all cases regular. She, in fact, made only five trips during that period. I think, therefore, that those trips must be excluded in arriving at her average
562 daily earnings. During the last twelve days of May and the whole of July she made regular trips, except Sundays and the fourth of July. She may have been, and probably was, employed on excursions on those days, but as nothing appears in the evidence with sufficient certainty to base any calculation upon as to those days, they must be treated as lay-days, and excluded from the estimates. Excluding these lay-days, then, the Dove made eleven regular daily trips in May, and twenty-seven in July. Her gross earnings for the eleven days in May were $2,137.83, and her gross expenses for the period of time covered by those eleven days were $982.85, calculated on the basis of her gross expenses for the whole month, as proven. Her net earnings, therefore, for the eleven days in May were $1,154.98, and her average net earnings per day were $105. Her gross earnings for the twenty-seven days in July were $6,167.70, and her gross expenses for the whole month were $3,179.88. Her net earnings, therefore, for the twenty-seven days in July were $2,987.82, and her average net earnings per day were $110.66. Looking at these results, and taking
563 into consideration the opinions of the expert witnesses, estimating the value of the use and services of the Dove to her owners

at $110 to $130 per day, and the evidence that the period of her detention comprised a large portion of the most profitable part of the season, it clearly appears that the amount, $100 per day, fixed by the commissioner, is certainly not beyond, but on the contrary is entirely within, the amount of the boat's probable net daily earnings during the time of her detention. I shall therefore not disturb the commissioner's report in that respect.

But the able and usually accurate commissioner who made the report has committed two errors in regard to the number of days for which allowance for demurrage should be made. In the first place he has allowed for 28 days, when only 27 intervened between the time of the collision and the resumption of her trips by the Dove—the collision having occurred on the night of May 31st, and the Dove having resumed on the 28th day of the following month. In the second place, no allowance was made for lay-days. I think this should be done, for the reason that the same proof upon which we base our conclusions as to the
564 value of the boat's earnings shows quite as clearly that Sundays were usually, although not quite always, lay-days. As four of these occurred during the 27 days' detention, they must be deducted from the time. This is necessary to make the estimates as to time and as to the amount of damages per day consistent with the basis upon which both are established. And it is contrary to justice that the owner should receive pay for such days, as it is reasonably certain, for anything the proofs show, the boat would have earned him nothing. Deducting the 4 days from the 27 days leaves 23 days for which the allowance must be made at $100 per day, making in all $2,300 instead of $2,800, as found by the commissioner; and his report must be modified accordingly. The difference, $500, together with interest thereon at the same rate and for the same time allowed by the commissioner on the whole amount, must be deducted from the gross amount of the commissioner's report.

Second. As to the allowance made for the services of the steamer
565 Eighth Ohio. Both parties except as to this item, respondent claiming it is too high and libellant claiming it is too low.

There is no dispute as to the fact of the services being rendered, its necessity, and as to the length of time. The only dispute is as to the amount. The steamer belonged to libellants. She was hired by the underwriters, and was used by them as a wrecking-vessel in raising the Dove. She was so used in running of errands, boarding and lodging the men, and tugging. The price agreed to be paid was $140 per day, and that amount was paid and allowed in the adjustment. Libellant claims that the price was agreed on and paid in good faith, and that the whole amount ought to be allowed. Respondent claims that a lower-priced boat might have been obtained, which would have answered just as well, by reasonable diligence; that the amount was unreasonable because there was no crew hired with her, or, if hired, it was unnecessary, because the crew of the Dove could have been used on her; and that at all events the crew of the Dove was in fact so used to some extent.

566 The commissioner reduced the amount from $140 per day to $100 per day, and fixed the allowance on that basis. The testimony appears to be somewhat conflicting, and as it comes to me the preponderance is not palpable. The commissioner had the witnesses all before him and heard their testimony, and no doubt gave it careful consideration. Under these circumstances the safer rule appears to be not to disturb the finding of the commissioner, and such I believe to be the usual practice, (see Egbert vs. Baltimore and Ohio R. R. Co., 2 Ben. R., 223; Holmes

vs. Dodge, 1 Abb. Adm., R. Co.) The exceptions to this item are therefore overruled.

Third. As to the remaining exceptions:

Libellant's first exception is to the disallowance of Campbell & Owen's bill for lining up the engine. This was abandoned at the argument and is therefore overruled.

Libellant's second exception is to the disallowance of the sum of $100 paid Joseph Nicholson. However valuable Nicholson's aid may
567 have been to libellant in the settlement and payment of bills, and I have no doubt it was valuable, I fail to see its necessity, and I think it is too remote to be charged as a necessary consequence of the collision.

I therefore consider the disallowance correct, and libellant's second exception is overruled.

Libellant's third exception is to the reduction of the claim for services of the steamer Eighth Ohio to $100 per day. This has already been considered.

Respondent's first exception is to John P. Clark's bill for $25. This bill is for calking, and the objection to it is that the service was rendered long after the Dove resumed her trips. It is conceded by libellant that the testimony is not sufficient to show that the service was made necessary in consequence of the collision, and a re-reference is requested to take more proofs. If the case was to be re-referred for any purpose it would be very proper to send this item back for more proofs. But as I do not consider a re-reference necessary for any other purpose, and as it is
568 doubtful upon the face of it that this bill is a proper charge against the respondents, and as the amount is so small as hardly to warrant the expense of a re-reference on account of it alone, I shall leave the parties to stand upon the proofs already taken. Looking into the proofs I find them insufficient to sustain this item. It is, in fact, conceded that they are insufficient. Respondent's first exception is, therefore, sustained, and this item disallowed.

Respondent's second exception, to W. M. Dwight & Co.'s bill, $4.65, and his third exception, to D. Lester's bill, $26, were submitted to on the argument, and the same are therefore sustained and these items disallowed.

Respondent's fourth exception is to so much of John Boydell's bill as was furnished and charged after July 26th, 1869—$29.94. Boydell's bill is for paints, &c., and the whole amount allowed by the commissioner is $187.74. The portion of it objected to is for items furnished and charged after the Dove resumed her trips, and on that ground. The evidence shows that much of the painting constituting a part of the nec-
569 essary repairs was done after the Dove resumed her trips, and I think the evidence shows, with sufficient certainty, that the paints were furnished for that purpose. Respondent's fourth exception is therefore overruled.

Respondent's fifth exception, to the bill for the services of painters, $37.30, is based upon the same ground as the fourth exception, and the same answer applies to it. This exception is also overruled.

Respondent's sixth exception is to Buchanan's bill for board, $4.55. The voucher upon which this allowance was made is dated and receipted October 6th, 1869—a long time after the repairs were completed. There is nothing in the voucher other than its date, and I can find nothing in the testimony to show when the board charged was furnished. Respondent's sixth exception is therefore sustained, and the item named is disallowed.

Respondent's seventh exception, to E. Smith's bill for lumber, $29.03, was submitted to on the argument, and is therefore sustained and the item disallowed.

Respondent's eighth exception is to damage to cornice, head-lines, and frescoes, $300. This allowance was made solely upon the esti-
570 mate of Captain Sloan, master of the Dove, and who had charge of the repairs generally. Estimates of this kind are allowed and acted on in cases where the repairs have not been made at the time of the assessment, but never, I believe, where the repairs have been actually made. Where the repairs have been made, I believe it to be the inevitable rule, at all events I am clear that it ought to be, to adopt the actual cost of the repairs as the measure of damages. The actual cost admits of certainty of proof, while estimates depend upon the mere opinion of witnesses, which may or may not be correct. In this case the cabin, in which this item of damage is alleged to have been done, was repaired, and it does not appear what these particular repairs cost separately from the general repairs. Under the rule above stated there is, therefore, no basis upon which to make the allowance. I would re-refer the case for further proofs as to this item, if it were not for two considerations, on account of which I cannot see that it would be of any avail. In the first place, it does not appear that these repairs were made or any account kept separately from the
571 repairs generally. On the contrary, it is evident that they were not so made and that no such account was kept. It would be a difficult task, if not an impossibility, to select and designate from the general mass of materials and labor in making the general repairs those that were used for this particular purpose. But this alone would not perhaps deter me from making the reference. In the second place, it does not appear that the particular items of material and labor which went into these repairs are not included in the allowance[s] already made. If such were the case, the burden is clearly upon the libellant to prove it. In the absence of proof it will be presumed that the allowances made for materials and labor cover the whole amount furnished and expended in making all the repairs, including the item in question. From the surrounding circumstances I have no doubt such is the case. In fact, no claim is made to the contrary. I am satisfied, therefore, that the cost of these repairs is already allowed, and of course a re reference could be of no avail. Respondent's eighth exception is there-
572 fore sustained, and the item to which it relates is disallowed.

Respondent's ninth exception is to the allowance of demurrage, and has been considered and sustained in part.

Respondent's tenth exception is to Henry Campbell's bill, $4. The evidence does not come before me with sufficient clearness and certainty to warrant me in disturbing the finding of the commissioner. Respondent's tenth exception is therefore overruled.

Respondent's eleventh exception, to value of the services of the steamer Eighth Ohio, has been considered and overruled.

Respondent's twelfth exception is to 28 days' wages of officers and crew, $630. It was conceded in the argument that so much of this item as is included in the adjustment must be deducted, for the reason that such portion has been already allowed. The time covered by the adjustment is twelve days. The whole time, as we have already seen, when considering another branch of the case, was 27 days; deducting the twelve days leaves 15 days for which the allowance should
573 have been made. The amount per day fixed by the commissioner, and to which no exception is taken, is $22.50. This makes the

whole amount to be allowed on account of this item $337.50, instead of $630, as fixed by the commissioner, leaving the difference, $292.50 and interest, to be deducted from the commissioner's report.

Respondent's thirteenth exception is to the item allowed for interest. Interest is always allowed in such cases, and I do not understand that this is questioned as matter of law. All that is contended for under this exception is that interest *in* all amounts disallowed by the court should be deducted. This is no doubt correct, and is conceded by libellant. This exception is therefore sustained to that extent.

Respondent's fourteenth and last exception is to D. McCullom's bill, $43. The ground of this exception is that the same item is included in the adjustment. There is an item of about the same amount allowed in the adjustment, and both items are in part for the same thing, viz, carpenter-work, that in the adjustment being for "carpenter-work
574 and saw lost, $43," and that in the commissioner's report being for work alone and for $43.75, (not just $43 as stated in the exception.) But there is one thing that it seems to me settles the matter beyond all question. The adjustment covers dates to June 12th. The vouchers proven, upon which the allowance excepted to was based, expressly states the time covered by it to be June 12th to June 26th, and there is not a particle of evidence to vary these dates. These dates must therefore be taken as they stand, and, being so taken, the two items cannot be the same. Respondent's fourteenth and last exception is therefore overruled.

From the foregoing we have the following result:

John P. Clark's additional bill:

Voucher C, disallowed	$25 00
W. M. Dwight & Co.'s bill, voucher F, disallowed	4 65
D. Lester's bill, voucher I, disallowed	26 00
Buchanan's board-bill, voucher N, disallowed	4 55
E. Smith's bill for lumber, disallowed	29 03
Damages to cornices, head-lines, & frescoes, disallowed	300 00
575 Demurrage, 28 days, at $100 per day, $2,800, reduced to 23 days, at the same rate, $2,300; deduction	500 00
28 days' wages of officers & crew, at $22.50 per day, $630, reduced to 15 days, at the same rate, $337.50; deduction	292 50
Total	1,181 74
To this amount must be added interest for the same time and rate as in the commissioner's report, viz, July 30th, 1869, to February 5th, 1872, at 7 %	207 98
	1,389 72

This amount must be deducted from the gross amount of the commissioner's report.

Let a decree be entered in accordance with this opinion, and confirming the commissioner's report and final decree thereon as thus modified, and against the libellant for the costs of these exceptions.

576 CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

I, Addison Mandell, clerk of said court, do hereby certify the above and foregoing document or record to be a true copy of the original record, on appeal from the district court of the United States for the eastern district of Michigan, in the case of the River and Lake Shore Steamboat

Line, owners of the steamer Dove, libellants and appellees, against the propeller Mayflower, her engine, &c., H. Norton Strong, claimant & appellant, filed in said circuit court; and also of the original record and proceedings filed in said circut court, on appeal from said district court on cross-libel, in case of H. Norton Strong, owner of propeller Mayflower, &c., against the steamer Dove, her engine, &c., ordered by said circuit court to be filed in said original cause; and also of the original entries, evidence, files, and proceedings in said circuit court, on appeal in said cause, including the opinions of Hon. John W. Longyear, district judge, in the said district court, on final hearing and on exceptions to commissioner's report, filed in said circuit court; that I have carefully compared the same with such originals, and the same is a correct transcript therefrom, and of the whole of such original records, files, and proceedings, with the exception that in giving copies of the testimony
577 taken in said cause, on original and cross-libels, I have omitted the formal portions, authentications, jurats, &c., of each deposition, in pursuance of the stipulation signed by the solicitors for the respective parties filed in said cause, a copy of which is hereto annexed.

Witness my hand and the seal of said circuit court, at Detroit, this ninth day of October, in the year one thousand eight hundred and seventy-three.

ADDISON MANDELL, *Clerk.*

(Indorsement on cover:) No. 277. Thomas Pitts, exr. of H. Norton Strong, dec'd, claimant of steamer Mayflower, appellant, vs. The River and Lake Shore Steamboat Line, owners of the steamer Dove. E. Michigan C. C. U. S. Filed 18 October, 1873.

SUPREME COURT

OF THE

UNITED STATES.

IN ADMIRALTY.

THE RIVER AND LAKE SHORE STEAMBOAT LINE, owners of the steamer Dove,

Appellees.

vs.

THE PROPELLER MAYFLOWER

AND

THOMAS PITTS, Executor, &c., Owner of the Mayflower,

Appellant,

vs.

THE STEAMER DOVE.

On Libel and Cross-Libel for Collision.

Appeal from the Circuit Court for the Eastern District of Michigan.

Brief for the Appellant.

F. H. CANFIELD,

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DETROIT:

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SUPREME COURT

OF THE

UNITED STATES.

IN ADMIRALTY.

THE RIVER AND LAKE SHORE STEAMBOAT LINE, owners of the Steamer Dove,
Appellees,
vs.
THE PROPELLER MAYFLOWER
and
THOMAS PITTS, Executor, owner of the Mayflower,
Appellant,
vs.
THE STEAMER DOVE.

On Libel and Cross-Libel for Collision.

Appeal from the Circuit Court for the Eastern District of Michigan.

Brief for the Appellant.

This is a case of collision which occurred on the night of the 31st of May 1869, on the St. Clair River, between the Propeller Mayflower, and the Steamboat Dove. The former, was on a voyage from Chicago to Buffalo, loaded with a cargo of grain and flour. The Dove was on a voyage from Detroit to Port Huron, and the intermediate river ports.

The Mayflower intended to stop at Marine City, on the American shore, and about three miles below, from the scene of disaster. The Dove stopped at Marine City, and intended also to touch at Ricord's Dock on the American shore.

The place of collision, it is admitted by both parties, was nearly opposite this Dock. But they differ as to the side of the river on which it took place. On the part of the Mayflower it is claimed, that it occurred on the Canadian side of the river; while the owners of the Dove insist that it took place upon the American side, and within 200 or 300 feet from the shore.

As the boats approached each other, each signaled by two blasts of the whistle its intention to keep the port, on left hand side of the river; the Mayflower that she would keep the Canada shore,—the Dove that she would keep the American shore. These signals were several times repeated, and each vessel was bound to act accordingly.

The question as to the locality of the collision, is the most important one in the case. If, therefore, we show that it occurred on the Canada side of the channel, we shall prove the Dove to have been in fault.

The original libel avers: "That on the 31st day of May, A. D. 1869, the said Dove being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackeled, appareled and appointed, and having the usual and necessary complement of officers and men stationed at the proper posts and upon the lookout, for the protection and safety of said vessel, and with her proper and usual signal lights properly displayed and brightly burning, was bound on a voyage from Detroit to Port Huron, and intermediate ports in Canada and Michigan. That about the hour of eleven o'clock in the night time, said Dove was proceeding up the St. Clair river, close in on the American channel bank, and *just below Ricord's dock*, so-called. That the night was *somewhat foggy*, and said Dove was proceeding at a very slow rate of speed and sounding her fog-whistle at short intervals, and in such a manner as to indicate to all approaching steamers that she was proceeding up *close to the American channel bank*."

Third. That at the same time the said Mayflower with insuf-

ficient officers and crew, and they not attending to their duty, and with no colored signal lights properly displayed and burning, and blowing no fog-whistle as the law demands, and at too great speed, was running down the St. Clair River.

Fourth, That said Dove constantly signaled all steamers that might be approaching to keep to the left, by two signal blasts. That when she saw said Mayflower she again gave two blasts of her whistle, stopped and backed, and *although close to the American channel bank, in order to give the Mayflower more room she put her wheel* A STARBOARD, *and at the time of the collision hereinafter mentioned was nearly or quite at a standstill.*

Fifth, That notwithstanding all the efforts possible on the part of the officers and crew of the Dove to avoid said collision, the said Mayflower came down upon said Dove striking her on her port bow, and causing such damage that the boat was in immediate danger of sinking, and in order to save said boat and cargo from sinking in deep water, and to save the lives of the passengers and crew it was necessary to run into the shore, *and there being better shore in Canada*, and the force and momentum of the collision having turned the bow of the Dove toward the Canada shore, she was immediately stranded and at once filled with water and sank.

The damages claimed *are Eighteen Thousand Five Hundred and Fifty Dollars*, and interest:

The following faults are charged against the Mayflower:

1st, That she had incompetent and insufficint officers and crew, not properly stationed, and not carefully attending to their duties.

2d, That she was proceeding at too great speed. That she neither gave the proper fog signals, nor gave nor answered the proper passing signals.

3d. That she did not properly alter her course, or check, or stop her headway or take any other or proper measure to avoid said collision.

The answer of the owner of the Mayflower, as Respondent,

Denies, the allegations of the second article of the libel, ex-

cept the statement of the voyage on which the Dove was engaged, and that the night was foggy.

Admits that the Mayflower was running down the St. Clair river; but denies that she was without sufficient officers or crew;

Denies that she was without colored signal lights properly displayed:

Denies that she was running at too great speed:

Denies that she blew no fog whistles:

Denies the allegations in the fourth article of the libel:

Fifth, "And for answer to the fifth article of said libel, respondent says that he denies the same, except the statement of the part that the Mayflower struck the Dove, and that the latter was in danger of sinking, and did sink on the Canadian side."

The answer denies that the damages suffered by the Dove are correctly stated in the libel, and it denies each of the faults specified in said libel.

"And for answer to the eighth and ninth articles of said libel, respondent denies the same, and alleges that the said collision was occasioned solely by the negligence, unskilfulness and carelessness of the persons navigating the said steamer Dove, whereby great damage was done to said propeller Mayflower, *the just amount of which he will proceed to recover by cross libel*, and alleges that said collision did not occur through any fault, negligence or improper conduct on the part of the respondent, said propeller her officers or crew."

With this answer a cross libel *was* filed to recover the damages occasioned to the Mayflower, in which it is avered, among other things, that the Dove instead of regarding the signals given, to keep to the American shore, and to pass to port on the Mayflower's starboard hand, attempted to pass to starboard on the Mayflower's port hand, and thereby passed directly across the bows of the Mayflower, towards the Canadian shore, as sufficiently appears, from the fact, that she sank on that shore. It also avers, that the Dove was without proper lights; that her officers and crew were incompetent; and that she had no proper lookout.

See Record p, 189, 190, *Folios* 383, 384.

To this cross-libel, the original libellants filed an answer denying the allegations of fault on the part of the Dove, and avering that the Mayflower was guilty of the same specifications of fault as are charged in the original libel.

Record p. 194, 195, *Folios*, 396—400.

The cause was heard upon the libel and cross-libel as one suit, in the District Court, where an interlocutory decree was rendered against the Mayflower, and referring it to a commissioner to ascertain the amount of the damages to the owners of the Dove. Upon the entry of the final decree, the owner of the Mayflower appealed to the Circuit Court, where the cause was fully reheard upon the merits and where the decree of the District Court was affirmed. From that decree his executor has appeared to this Court.

ASSIGNMENT OF ERRORS.

The decree is general, and does not disclose the grounds on which it rests. There was no opinion filed by the Circuit Judge, and it seems impossible, in assigning errors to rest them on anything that appears on the face of the decree.

In assigning errors the appellant is compelled to assign the reasons why he claims the decree to be erroneous.

The appellant says that said decree is erroneous:

1*st*, Because it does not find from the evidence, that the collision occurred on the Canadian side of the channel; and that the Dove was therefore in fault.

2*nd*, Because it does not find the Dove in fault for illegally attempting to cross the bows of the Mayflower.

3*rd*, Because it does not find that the Dove was running at an illegal rate of speed.

4*th*, Because the lookout of the Dove was incompetent, and therefore she should have been found in fault.

5*th*, Because the court below found the Mayflower wholly in fault, whereas, under the law and the evidence, the steamer Dove was in fault, and a decree should have been rendered in

favor of the appellant for the damages caused to said Mayflower on account of said collision.

6*th*, Because it finds the Mayflower to be wholly in fault; whereas it appears from the evidence, that the said Mayflower, was properly officered, manned and equipped. That she had a competent lookout.

That she was upon her proper course on the Canada shore.

That she gave and answered the proper signals.

That she had the proper lights, properly displayed.

That she ran at moderate and proper speed. And

That the collision was not caused by any fault, negligence, or want of care on the part of her officers or crew.

7*th*, Because it appears from the evidence, that the said Dove did not keep her proper course on the Canadian shore;

That she had no proper lookout;

That she ran at too great speed:

That the collision was caused by reason of the fault, negligence, and want of care on the part of her officers and crew.

8*th*, Because the evidence shows that if the Mayffower was in fault, it also shows equal fault on the part of the Dove, and therefore a decree should have passed against the Dove as well as against the Mayflower

By reference to the opinion of the District Judge, Rec. 508, it will be seen that the only ground upon which that court condemned the Mayflower was, that in its opinion, the collision occurred upon the American side of the river. The Circuit Court considered her in fault, because she was running at an excessive rate of speed, and on account of the want of a proper lookout; but not, as we understand it, because she was on the American shore. No written opinion was filed by the Circuit Judge, but we believe, that in disposing of the case, he declared that, in the view taken by him, there was no necessity of passing upon the question of locality. There has been therefore no "concurrence" by the Judges of the Courts below, as to the grounds upon which the Mayflower has been condemned. The case therefore, does not come within the rule laid down by this Court, in *The Quick-step*, 9 *Wallace* 665. And especially should it be so regarded,

when the fact is considered that a large portion of the proofs in the District Court were taken by depositions, the witnesses not being before the Court, and that under the appeal a large mass of additional testimony was also taken in the Circuit Court, upon deposition.

And we submit, that it is peculiarly a case in which the appellant is entitled to have the evidence fairly considered by this Court, and the facts determined according as it shall determine the weight of testimony to be. In other words, this is a case, which calls for the application of the rule as announced in the case of the *Ariadne*, 3 *Wallace* 475, where his Honor, Justice Swayne, says: "The right of appeal to this Court, is a substantial right, "and not a shadow. It involves examination, thought and "judgment. Where our convictions are clear, and differ from "those of the learned judges below, we may not abdicate the "performance of the duty which the law imposes upon us by "declining to give our own judicial effect."

It is evident from the pleadings, that the *locality* of the collision is *the* important and probably decisive fact in the case.

In behalf of the appellant, I insist,

I.

THAT THE COLLISION OCCURRED NEARLY OPPOSITE RICORD'S DOCK, UPON THE CANADA SIDE OF THE RIVER, AND WITHIN ABOUT 600 OR 800 FEET FROM THE SHORE.

As bearing upon this proposition, I will consider the courses of the respective vessels.

1. *As to the course of the Mayflower.*

The proofs show clearly, that the Mayflower kept the Canada shore, for many miles above the scene of disaster. That her officers intended to keep that shore; that such was the order of the officer of the deck, to the man at the wheel, and that such order was understood and obeyed.

HALLIMAN, Rec. p 137. "Was wheelsman on Mayflower at the time of the collision; took the wheel outside the river: when we entered the river, the first mate told me we should keep down the Canadian shore. I obeyed the order and kept that shore as high as possible, until the collision."

CROSS-EX. p. p. 139, 140. "The first mate gave me the order to keep the Canada shore down; he was officer of the deck; that order was a common order with some; we make it a rule. It was a rule with the captain or mate of the Mayflower but not constant; they never ordered me to come down the American shore. The next order I got was to keep her steady as I could. The next order I got was steady; it was, may be, two or three minutes, more or less, after I received the order to starboard; did not see the shore all the time coming down; saw the Canada shore when I saw any."

J. WOODWORTH, 195, 196, first mate of the Mayflower, and officer of the deck on watch, says: "We came down the Canada "side of the river all the way. The Canada shore was visible all "the way." "When 2 or 3 miles below St. Clair, I heard some boat approaching me ahead, coming up the river as I supposed. I then blew two whistles, indicating that I was on the Canadian shore. We were then from 200 to 400 feet from that shore."

N. WOODWORTH, Master, p. 181. "Was on promenade deck, until we got down about abreast St Clair. My chief mate was on the pilot-house. About three quarters of an hour before the collision I went from the promenade to the hurricane deck in front of the pilot house. I shortly went from the hurricane deck on to the pilot house, as I heard two whistles off our starboard bow.

182 "From the time I went on the hurricane deck, we kept "the Canada shore as close as we could; it was foggy, and we "kept that to run by as a guide. If we got off from this shore "any distance, we lost sight of the shore; consequently, we kept "it as near as we could."

The following testimony of the appelee is to the same effect.

NEWCOMB, p. 33, says: "When I first saw Mayflower's light, I thought she was going to stop at Hawkin's dock. She seemed very close on there. This witness was fishing on the Canada shore below Hawkin's. He says: "She was so close in shore, that I thought she was going to stop at Hawkins', or one of the other docks near there. These docks are on the Canada side."

J. HAWKINS. p. 36. Was at his father's house on the dock referred to by last witness. He says, "I was watching the May-

flower; first saw her lights abreast my father's house; put my head out of the window and saw her there. Guess she was within 150 feet of the dock. She was very close to it. After she passed our dock she kept right down until she got a little below Bowen's dock, then changed her course," &c.

N. HAWKINS, 40, owner of dock referred to; "Was fishing on Canada side, about one quarter of a mile above Gray's dock;" 41, "Saw Mayflower coming down. She passed quite close to my dock. I could see her hull as she passed. She was below Reynold's dock when I lost sight of her." At p, 44, he says, "Saw Mayflower coming down. When we came to lower end of the dock, the boy remarked, there was a boat coming down. I said, never mind the boat, pull; and I had to help him, and to hurry up, and get out of the way; and just as we got out of the way, she passed us."

BOWEN, 48. "Mayflower passed pretty close to my wharf—300 or 400 feet distant, and probably closer."

GLOVER, who was aboard the Mayflower, but sworn as a witness for the libellant, at p. 67 says, that the Mayflower passed within 5 or 6 rods of Bowen's dock.

In the Court below, counsel for the appelee, conceded that the Mayflower *did* keep the Canada shore, until after she had passed Bowen's dock. But they claimed that at this point the Mayflower ported, left the Canada shore, crossed the river and there met the Dove close to the American shore near Ricord's dock, and within 200 or 300 feet from the shore. And *Sloan*, the master of the Dove, and in charge of her deck, at P. 63, says, that the collision took place within less than one length of the Dove, from the American shore, (the Dove's length being 190 feet.) *Dana*, 2nd engineer of the Dove swears the boats collided about 200 feet from the American shore.

Before citing the testimony on this point, will the Court consider how improbable it is that the officers of the Mayflower should have attempted such a maneuvre, or that such maneuvre took place, under the circumstances and conceded facts of the case.

The Record shows,

1*st*, That it was the custom of the Mayflower in coming down the river, to follow the Canada shore. See WOODWORTH, master,

Rec. 181. J. WOODWORTH, mate, 200, 204, 205. HALLIMAN, wheelsman, 140.

2*nd*, That it was the intention of the officers of the Mayflower to stop at Marine City, which is about 3 miles below the scene of disaster. And, that to do this, it was necessary for them to keep the Canada shore in order to have sufficient sea room to round to, and head up stream, as is the custom. See J. WOODWORTH, Rec. 200.

3*rd*, That the officers of the Mayflower were not only competent seamen, but were from actual experience, perfectly well acquainted with the St. Clair river. WOODWORTH, her master, having followed the water about 40 years, and having been a master of steam vessels for over 20 successive years, during which time he was engaged in navigating up and down this river. At the time of the collision, and for a long time previously, he resided at Marine City. Rec. 181.

WOODWORTH, the mate, Rec. 104, had sailed for 28 years; had been mate and master for about 24 years; had navigated the St. Clair river for about 25 years. These were not the men to be easily deceived or misled as to their locality, or the course of their vessel.

4*th*, That it was not the custom of Mayflower when in the river, to run by compass but by ranges along the shore, and that on this occasion such was the manner in which she was actually navigated.

HALLIMAN, 141, 142. "We did not run by compass. Ran by the shore. When I could not see land, would steady by the compass, until I could get hold of the starboard [land] again."

5*th*, That the night being foggy, and the Canada bank being bold and high, it would furnish a much better guide to steer by, than the American shore which is much lower, and which for several miles above Marine City, and above the place of collision, is flat and marshy, so that objects on that side of the river can not be easily distinguished at night, even when there is no fog.

See Westbrook, Rec. 427.

6*th*, That on the occasion of the collision, the fog had settled much more densely upon the American shore than on the Cana-

dian, and so obscuring the former, as to render it the more difficult and dangerous to navigate that side of the river.

See Westbrook, Rec. 429, 437.
Carey, Rec. 454.

7th, The point below Bowen's dock, where libellants claim we ported, is less than one and one-half miles above the place of collision; and to have reached that place, if it occurred on the American shore, the Mayflower would be compelled to sail entirely *across* the river, which at that point is three-quarters of a mile wide, right into the dense and blinding fog, thus leaving the shore where the fog was comparatively light, and where objects could be easily distinguished. And upon reaching this point, near the American shore, she would again be compelled to change her course and re-cross the river, in order to round to at Marine City.

8th, The record further shows, that the Mayflower had heard the Dove's signal to keep the port side of the river, and had assented to it before she reached the place where it is claimed she ported, so as to bring her over to the American shore. See

WOODWORTH, 183. "Went on pilot house about a mile above where collision took place; it was there I heard the whistle probably a mile off or more, off my starboard bow full 3 points. I answered him distinctly, and we continued to answer each other by blowing two whistles. When I first heard the whistle the Canada shore was distinctly visible. I don't think I was over 100 feet from the channel bank, keeping as close to it as we could keep."

WOODWORTH, mate, 196. 197, 208, says, the Mayflower was near Bowen's dock upon which there was a large fish light, which threw its glare nearly across the river; she was running under check, and that about this time he heard the Dove's signal and answered it, four or five times. *At* 209, he says, that he heard the signals of the Dove and answered them, and then said to the master that there must *be a boat going up the river on the other side.*

Several other witnesses also speak of the fact of there being a fish light upon the dock.

Now this evidence shows clearly, that both the master and mate heard the signals of the Dove, while they were yet upon the

Canadian side of the river, and before they had reached the point where libellants claim they ported. It also shows that they perfectly understood the signals, and knew what their duty was under the circumstances. And will your Honors readily believe that they at this time, changed their course from one of safety to one of immediate danger? And this too, in violation of their usual custom, and the express order which had been given to keep the Canadian shore? What possible object had they in so doing? Under the circumstances, would not such a movement be utterly absurd? Will not your Honors require strong and convincing proof before you believe that these officers with the skill, and experience which they possessed, were guilty of so gross an error,—so palpable and reckless a blunder, in the navigation of their vessel?

But I proceed with the proofs, and shall endeavor to show that the testimony demonstrates the truth of the second proposition:

II.

THAT THE MAYFLOWER DID NOT PORT, AS CLAIMED BY THE LIBELLANTS, BUT CONTINUED UPON HER COURSE, ON THE CANADIAN SIDE OF THE RIVER, AND THE COLLISION TOOK PLACE ON THAT SIDE OF THE CHANNEL.

1. The following is the testimony upon this point on the part of the appellant:

HALLIMAN, wheelsman, p. 137. "When we entered the river the first mate told me we should keep the Canadian shore; I obeyed the order, and kept that shore, *keeping it all the way as nigh as possible until the collision.*" "The Dove ran mostly right square across our bows, across the river; think we were two-thirds of the river from the American shore towards the Canada shore when the boats struck."

CAPTAIN WOODWORTH, 182, 183. Was on the hurricane deck until about a mile above the place of collision, and near the docks, when, having heard the Dove's whistle, full three points off the starboard bow, he went on to the pilot-house and relieved the mate from command. The signal was several times heard, and answered by the Mayflower. When it was first heard "the Canada shore was distinctly visible; don't think we were more than 100 feet from the channel bank; we proceeded down the Cana-

dian shore as clore as we could, blowing two blasts of the whistle and receiving two blasts of a whistle from the other boat approaching us; and when I saw a light was fully three points to my starboard bow," the Dove's white light. At p. 186, he says, that the Mayflower was not more than 400 feet from the Dove when the latter grounded on the Canada shore. At p. 462, he says, that as he came down the river, he saw the light at Bowen's or Hawkins' dock, (which both Glover and our mate saw,) and that when he first saw it, it was from two to four points off his port bow; "We passed about 150 feet from the dock;" could see the spiles of the dock between him and the light, which he thinks was a fish light in a boat on the beach. When he last saw the light, the Mayflower was about a half a mile above Reynolds, dock, and it then bore about two points off the port quarter from directly astern; did not at any time see this light over the starboard quarter. P. 463, "After we lost sight of the light, we saw the Canadian shore." He swears he saw Reynold's dock distinctly, which he passed at a distance of about 200 feet, but that he did not see the American shore at any time after going on to the pilot-house.

It will be seen that the mate fully corroborates the master, as to seeing the Canada shore, after the latter took charge of the boat.

Now if we refer to the diagram of the river, and project the course of the Mayflower from a little below Bowen's dock, and, say 200 feet from the channel bank towards the centre of the river, to a point below Ricord's dock, on the American shore, and 200 feet from *that* dock, which the libellants say was the place of collision, we shall find that if the Mayflower ran that course; 1st, That after passing the point referred to below Bowen's dock, the master of the Mayflower would have seen the light at Hawkins' dock over his *starboard* quarter, and *not* over his *port* quarter, where both he and his mate swear they did see it. 2d, That he could not in passing have seen Reynold's dock, which is about three-eighths of a mile below Bowen's. 3d, That before the Mayflower could have gone one-half the distance from her supposed place of porting to the place of collision, she would have been so close to the American shore as to have been in danger of grounding, and that her officers would have seen *that* shore and not the Canadian. And if the Canadian shore had been visible after

such porting, would not the fact at once have been revealed, that the Mayflower was departing from her true course, and will the Court doubt that her officers would have corrected the error?

It has been already shown that previous to this time the officers of the Mayflower had heard and answered the signals of the Dove. They *knew* that the Dove, according to the signals would pass to starboard on the American shore, and that their duty required them to keep the Canada shore; they *knew* that for them to port, and run toward the American shord, would be to violate the most familiar rule of navigation, and bring them into danger of almost certain collision with the approaching boat. And under these circumstances, I submit, that it is beyond the limits of probability to suppose, that they did port and pass over to the American shore, as counsel for the Dove contend.

But it is claimed by libellants that the officers of the Mayflower were in doubt and ignorance as to their locality, and that their porting was the result of such ignorance and doubt. But this is impossible. If the Mayflower did port so as to cross the river, it was because her officers *intended* such a manenver. The circumstances are such as to preclude the idea of a *mistake* on their part. They saw the Canada shore, opposite to where they were, and for a long distance ahead; they *knew* they were leaving that shore if they ported, as our opponents claim. They had heard the signals of the Dove full three points over their starboard bow, and answered them, and their testimony convicts them of willful *perjury*, or it is a fact that the Mayflower did not cross to the American side of the river, but continued on her course, down the Canadian shore until she met the Dove.

Again; It is claimed by the libellants that there is a disagreement between the testimony of the Mayflower's Captain and mate, and that the latter shows that the propeller did so port as to carry her over to the American shore. And they refer to Rec. 206, 207. But if we compare what the mate there actually swears to, with the rest of his deposition, no such conclusion can be arrived at.

At 206, he says, that after the captain came upon the pilot-house he told the captain that there was a light over the *port quarter*; that at the time of speaking to him he could not see

either shore, but did see it shortly after. He further says, that he told the captain he had headed the boat down the river as near the centre as he could. That the captain made some inquiry as to the locality of the boat, and that he *might* have said they were near Ricord's dock, but that it was then impossible to tell, because of the fog. The mate does not swear that the captain *did* say that the boat was on the American side; and it is evident that he has reference to a conversation which took place at or about *the time of passing* the docks where the light was. For at p. 218, he says,—"He came up on the pilot-house, and says he, 'it is as thick as mush;' or something like that; and, in a few minutes after that, it cleared up so we could see the woods on the Canada shore, as far, I think, as J. Burry's dock; we could see the shape of the land on the Canada shore. When it cleared up in the manner described, we might have *been three or four times the Mayflower's length from the Canada shore*," P. 220. "We must have been near Reynolds dock, somewhere abreast of it. Could not see the bank of the river, but could see the tops of the trees running round the shape of the shore," &c.

On his re-examination, p. 226, he re-asserts the same fact, that after the conversation with the captain alluded to, the fog lifted—lighted up.—so that he could see the trees *and* the Canada shore two miles ahead!

We insist that the testimony of this witness when rightly considered, in no wise conflicts with that of our captain as to the locality and course of the Mayflower. We also insist, that the proposition for which the libellants contend, and which was adopted by the District Judge, that at the time of the conversation between the captain and mate, "the fog shut down very "thick, so that nothing could be seen from the Mayflower on "either shore, and that it remained so up to the collision," is distinctly contradicted by the testimony of both the captain and the mate, and is unsupported by the testimony of a single witness.

2. *The testimony of the witnesses on shore, on both sides of the river, locates the place of collision upon the Canadian shore, and shows that the Mayflower must have continued upon her course without porting, until she met the Dove.*

BROWN, 156, 157. Was asleep in his house on Canada shore,

200 to 400 feet from the waters' edge, and about 50 rods above the place where the Dove finally grounded. "Was roused by the "noise of collision, rose at once and went to the front door, *and saw the lights of the two boats close on the Canada shore.*" Dressed and went at once on the beach or as near as I could get to them; in perhaps five minutes, the passengers came ashore in a yawl-boat, and I built them a fire; assisted them about an hour and then returned home."

ANNA BROWN, wife of preceding witness, p. 157. "Was awakened by the whistles of the boats before the collision. Heard them signal back and forth a number of times. Thought they had passed each other. I was wide awake when I heard the noise. The moment I heard the noise I jumped out of bed and ran to the door; heard folks hollering as I got to the door. Could only see the lights of the boats, The lights were on the Canada shore, a little below my house; they were right on the Canada shore. I remained at the door, did not leave the house. I saw the lights of both boats. The noise I heard was the collision of the boats."

COLLECTOR BLOOD, 160. "Was on board the propeller Plymouth at Marine City when the Dove passed up; while there I heard crash of collision; was standing on her upper deck on her starboard side, she heading up stream. Thought, when I heard the crash it was some boat coming down which had run into Bury's dock, on the Canada side."

GRAY, 169. "Was asleep in my house, which is almost opposite Ricord's dock, and about two rods distant from the water, on the Canada shore. Was awakened by the collision; it woke me up; thought some boat had run into my own dock; had a good deal of wood on the dock, and thought it had been knocked down by a boat running in; saw the lights of the vessels; could not tell how far off they were, but thought they were nearer the Canadian shore. Went to place where the Dove finally grounded; saw passengers making a fire, and others being taken ashore."

This witness lives and has a dock opposite Ricords', and but a very short distance above the place where the Dove went ashore. He does not pretend to fix the exact locality of the boats when he saw them, but the *facts* which he states are strong evidence as to the locality. The channel at this point is three

fourths of a mile wide. If the collision took place on the American shore, is it possible that he would have thought, when he heard the crash that a boat had run into his own dock?

CAREY, 454. "Saw the Mayflower above Waldron's dock, coming down, in the middle of the river, but she was on her right course coming down; she was nigher to the Canada shore; saw the Dove, she appeared to be coming from the American shore; saw red light of the Mayflower and the red and green lights of the Dove; I saw the vessels when they collided; they were nearest the Canada shore, between Clay creek and Gray's dock, about six or seven chains from Gray's dock; saw the Dove when she stranded; went down there and helped make a fire.

Counsel for the Dove will seek to cast discredit upon the testimony of this witness, because he says at folios 457 and 458, that the vessels did not whistle; that he heard no whistles; but in this he is no more mistaken than several of their own witnesses who they say are entirely creditable. Thus Hubbard, folio 12, and Kimball, folio 23, and Hawkins, folio 44, all say they saw no colored lights on the Mayflower; yet it is certain and I believe conceded, that she had colored lights; and Kimball at folio 25, says that he heard no whistle from the Mayflower at all, although it is certain that he did hear them; and it is undoubtedly true that Carey heard the Mayflower's signals, and had simply forgotten them, when he was sworn as a witness. which was about two years after the event happened. That he was present after the Dove grounded, and assisted her passengers, is beyond a doubt; and it is equally certain that he saw the collision. His house, which he then lived in, is at the place where he locates it, near where the Dove grounded. He is well known in the neighborhood, yet no one pretends to impeach his character or general credibility. Had he been a witness produced for the occasion, to testify to a falsehood in respect to his seeing the boats when they collided, he would never have testified as he did respecting the signals of the Mayflower.

The testimony of the witnesses who at the time of collision were upon the American shore, though somewhat of a negative character, also shows that the scene of disaster was upon the Canadian side of the channel. It is as follows:

J. B. RICORD, 173. Lives on St. Clair River just opposite Gray's dock. "On the night of collision, I was asleep in my

"father's house near Ricord's dock, about three rods from the 'water's edge. Heard noise of the collision; it woke me up. I got up immediately, raised the window and looked out. Did'nt see anything; heard a noise. The distance or fog preven ed me from seeing anything. *I could not see any lights.* I looked out on the river. Presume if there had been lights near enough I could have seen them." He says he could not have helped seeing the lights of the steamers if they had been within their length of his dock. That from the sound he formed the opinion at the time, that the boats were on the Canada side.

Now this witness was perfectly well acquainted with the locality. He swears he could see the water. The pretense that the buildings upon the dock prevented him from seeing the boats is idle. He could not have helped seeing their lights if they collided within their length of Ricord's dock.

J. RICORD, 177, 178. Lives near Ricord's Dock. House about 150 feet from the river, and 35 to 40 rods from north end of the dock. His house is about 12 feet higher than the river. Was asleep in bed when he heard noise of collision. He says he got up, went to the door, opened it and went out. He says, "I looked to see if I could see lights. *I could not see any light.* I looked for a few minutes."

Although this witness does not locate the place of collision so near the Canada shore as do the others whose testimony we have cited, still he refutes the theory that it occurred "within the length of the Dove from Ricord's dock." Had it occurred *there*, he would beyond all question have seen the lights.

See also Westbrook, 426.
E. Ricord, 444.

I have thus cited the testimony of all the witnesses on both sides of the river opposite the place where the collision occurred, and whose attention was attracted to the scene of disaster. And your Honors cannot fail to be impressed with the fact, that while those who were on the Canada shore *saw either the boats themselves or their lights*, not one of those who were on the American shore *could see either the boats or their lights.* Nor is it a less important fact, that of all these seven witnesses who were upon either shore, *not one* of them locates the place of collision upon the American

side of the river, but all agree in placing it on the Canadian side. If there was any conflict or difference of opinion among them upon this point, their testimony might be considered of less weight. But as they *all agree*, and are all disinterested, I can see no reason or justice in saying that they are mistaken. Certainly, if there was no other proof in the case, the Court would not hesitate in saying that the collision took place upon the Canadian side of the channel.

3. Having thus cited the proofs to show that the Mayflower did not port and pass from the Canadian to the American shore, I will now refer to the testimony upon which the appellee relies to prove the contrary, and to show that the collision occurred upon the American shore. But before doing so, I submit, that in order for the Court to have condemned the Mayflower as being alone in fault, it should have been able to find from the evidence that the alleged change in her course did take place, and that the collision did occur upon the American side of the river was *affirmatively* proven by a preponderance of testimony. And that to sustain the decree appealed from, the same duty is now incumbent upon counsel for the Dove.

As tending to prove that the Mayflower ported as claimed, the appellee cites:

NEWCOMB, p. 32, who says he was fishing half a mile above Ricord's, on the Canada shore. When he first saw the Mayflower she was above Hawkins' dock, which, he says, is about a mile above where he was; thought she was going to stop at Hawkins', but she seemed to be making her way through the fog toward the American shore. "When she passed me *I judged* she was pointing across the river; from where I saw her light first, and from where she passed me, she must have made a considerable across the river during that time." He says the crash seemed somewhere near Ricord's dock. After the crash he saw Dove's light coming across river, &c.

This testimony, I submit, is vague and uncertain: How is it that the witness, when he first saw the Mayflower thought she was going to stop at Hawkins', if she seemed making her way toward the American shore? If your Honors will examine the chart, you will see that if the steamer was close to Hawkins' dock and had not changed her coure at all, yet she would, on account

of the shape of the bank, have presented to a person standing at the place where Newcomb says he was, the *appearance* of crossing the river toward the American shore. Had she steadily kept her course, she would have been nearly a quarter of a mile further from the shore when she passed Newcomb, than she was when at Hawkins' dock.

But I insist that Newcomb is entitled to but little credit as a witness.

See Carey, 458; *Roberts*, 446 – 7; *Ricord*, 444–5; *Brown*, 441; *Westbrook*, 433.

J. HAWKINS, 35. Says the Mayflower passed 150 feet from Hawkins' dock, and kept right down till she *got a little below Bowens*, then changed her course right for Ricord's dock; that this is the course boats usually pursue. A statement which is entirely *false*. He says he watched her till "she got better than half way across, and that when he last saw her she was heading on to Ricord's dock; that he heard crash of collision, and that after the collision the Mayflower still held her course right down the American shore; a statement which is also false, as we shall hereafter show. M. HAWKINS, 41, says that after the Mayflower passed his dock, she took a direction for Ricord's dock; that he heard the signals just before the collision, which seemed to come from the American shore below Ricord's. But it is simply impossible that either of these witnesses from their positions and surroundings should have known whether the steamer changed her course or not, unless they watched her colored lights for that especial purpose; and it is not pretended they did so. On the contrary, M. Hawkins says, he did *not see her colored lights at all!* Their testimony therefore, is of very little importance.

BOWEN, 48. Saw the Mayflower close to his dock and a little below it; and that after passing she *seemed* to be going in the direction of Ricords's. When he last saw her, she was about half a mile below his dock, and he thinks, about the middle of the river

The criticism just made will apply to this witness also. But if we refer to the chart, it will be seen that half a mile below Bowen's dock, the river curves well into the Canada shore, and had the Mayflower kept her course, she would have seemed to persons on this dock, to be much nearer mid-channel than when she passed the dock. So she might have been where the witness places her half a mile below, and yet not have ported at all. But again: If the Mayflower was only half way across the river at the place where Bowen lost sight of her, there can be no doubt

that the Appellee is in error as to the extent of her porting, and as to her course generally, after passing Bowen's dock. We think the appellee can gain but little help from this witness. The chart shows conclusively, that if the Mayflower was in the middle of the river half a mile below Bowen's, she would have met the Dove upon the Canada side of the river opposite Ricord's, without any change in her course.

a. *The evidence shows that the only porting of the Mayflower, occurred above Hawkins' dock, and that it was done simply to keep her off from the channel bank.*

The mate was in command until this dock was nearly reached. He and the wheelsman must have known if they ported, and where. The mate says that he heard the Dove's signal when he was *above* the docks. At p. 212, he says that in coming down to Hawkin's he was obliged to port a little to clear the bank, because the bank curves there, as is shown by the chart. He further says, "I merely calculated to hawl her off the bank; we were keeping near the bank." While passing the docks referred to, the mate was relieved from command by the Master, and there is no pretense that the master gave any order to port.

The evidence then shows that there was no porting below the docks, and none anywhere ,sufficient to carry the vessel to the centre of the river.

We have already argued, that if the Mayflower ported so as to pass across the river, the fact must have been known to her officers. To what has been said we call attention to the fact, that there was a light in the binnacle, and that both the wheelsman and the captain could see, and did see the compass, and that even if the shore had been invisible, they would have known from the *compass* that they were varying from their true course if they ported to the extent claimed by the appellee. But the Canada shore was not invisible. The fog did not obscure it at this point. This appears not only by the testimony of the Mayflower's officers, but by Newcomb, Hawkins, and Bowen, also.

As to the course of the Dove:

Having traced the course of the Mayflower down the Canadian shore to a point below Gray's dock, and opposite Ricord's, we will turn our attention to the course of the Dove after leaving Marine City.

Up to this point her course seems to have been sometimes along one side of the river, and sometimes along the other.

Dumont, p. 115.

It is claimed by the appellee, that after leaving Marine City, the Dove laid her course *north*, and ran that course until she grounded *about one-eighth of a mile* below Ricord's; that she then changed her course a *single point* to the eastward, and so continued until the collision. In other words, that upon leaving the dock at Marine City, she ran a course *north* until she grounded, after which she ran a course N. by E. until she met the Mayflower. Upon the truth of this theory the case of the appellee depends. The distinctness and emphasis with which the master of the Dove has sworn to these courses, and the earnestness with which counsel in the court below maintained the correctness of this testimony, show that their case has little else to rest upon, so far as the question of locality is concerned. But if this *theory* is without foundation in fact, if the testimony respecting these compass courses is untrue, there will be no difficulty in arriving at the conclusion that the whole claim on the part of the Dove as to the locality of the collision is a mistake.

The testimony is as follows:

SLOAN, the master of the Dove and in charge of her deck, at p. 95, says that when he left Marine City he could see the trees at Ricord's dock and that he headed inside of that dock; that he learned that the Dove then headed *north;* looked at the compass and saw that she was heading north, and that he ordered the wheelsman to keep her so; that this order was obeyed; and that he kept this course till the Dove grounded. At p. p. 104, 106, he swears to the same thing.

Now the distance from Marine City to Ricord's is three miles. It was after ten o'clock at night when he left Marine City, and the fog between those places was thick and settled. It is therefore impossible that Sloan could have seen the *trees at Ricords.* He could not have seen any object at such a distance in such a fog. The "trees" which he saw, must therefore have been far below Ricord's, if he saw any.

Again; An inspection of the chart will show, that the course

north from Marine City strikes the shore a little more than a mile above Marine City, and *two miles below Ricord's.* Therefore the trees which Sloan saw, if he saw any, must have been at least two miles below Ricord's, and this of itself shows how greatly ignorant the master of the Dove was in respect to the locality and the true course of his vessel.

(*a*) Sloan himself contradicts the theory that his course was *north* from Marine City, when he says that the Dove on her way, passed nearer Bury's dock on the Canada side than to the American shore. But to have reached the middle of the river opposite Bury's, from Marine City, the Dove would have been compelled to run a course N. by E. ½ E.; and to have enabled Donaldson to see the shore at Bury's dock, as he swears he did, her course must have been at least two full points east of north.

The only witness who sustains Sloan in his statement, as to the course of the Dove after leaving Marine City, is Robinson, the wheelsman, (see p. 14.) But a very slight examination is necessary to show that his testimony is utterly worthless. Thus, he says that at the time of the collision, the Dove headed N. by E., and in almost the same breath he says she was heading on to Ricord's dock, or on to the shore; and yet he says that the Mayflower struck her on the *port* side a glancing blow which backed the Dove off toward the Canada shore! How could the Mayflower which was descending the river, strike the Dove on her port side, and back her off toward the Canada side, when the latter was going up stream and heading on to the American shore?

I submit that Robinson's testimony should be entirely disregarded. And that the testimony of Sloan as to his course from Marine City, is too inconsistent with other well established *facts* to be relied upon, even if it was not contradicted. But it is contradicted by DONALDSON, who was acting second mate of the Dove, and who at p. 127, says "I was aside the pilot house with the "captain, and we got along up the river as far as Bury's dock. "The captain then said whereabouts are we, do you think? I "said I thought we were near Bury's dock; I saw two trees right "by the dock; he straightened her across the river from there for "Ricord's dock or as near as we thought we could fetch it. In- "stead of fetching Ricord's we fetched below it. There is a low "marshy place there where we fetched up. The captain stopped

"and backed her; he put his wheel aport, ran out a little way "into the river, then put his wheel astarboard and ran up the "river again." See also p. 449.

This testimony is entirely inconsistent with that of Sloan.

(*b.*) If the Dove had run a course *north* from Marine City, it would have taken her so near the American shore that the persons on board would have seen that shore before grounding. But it is not claimed that the shore was seen by any of them, and Campbell, her lookout says, he *did not* see the shore. Under these circumstances we insist that we are justified in saying--that the course of the Dove from Marine City was *not north*, and that the testimony of Donaldson as to her course is correct.

Having shown that the Dove could not have run upon a course *north* from Marine City to the place where she grounded, we insist:

2. *The claim on the part of the Dove that she ran on a course N. by E. from the place of grounding to the place of collision, is disproved by the admitted facts, and by the evidence in the case.*

We shall assume that this place of grounding is one eighth of a mile below Ricord's dock, as Captain Sloan swears.

The draft of the Dove is about six (6) feet. (Rec. p. 469.) And the chart shows that she would run within at least two hundred (200) feet from the water's edge before touching bottom. Rec. 228. And had her course been N. by E. from this point, she would have grounded again before reaching the dock, or she would have run inside the dock. She could not have reached a point opposite the dock. The chart will show that the course from the place where she grounded, to the outer edge of the dock, is at least another entire point to the eastward. This being so, it is simply impossible that the Dove could have reached the place of collision by running a course N. by E. even if the collision occurred at the place contended for by the appellee. To have reached that place, it is perfectly clear that her course must have been, at least, two points more to the eastward. Had her course been as claimed by her counsel, it

would have been utterly impossible for the Mayflower to have gotten between her and the dock so as to strike the Dove on her port bow.

We submit that the testimony of Sloan as to the course of his vessel is already demonstrated to be a mistake, which is not to be accounted for or explained, as was attempted in the court below, upon any theory of variation of his compass from the true meridian. A steamer with a compass that would vary to the extent indicated by Sloan's testimony, would not be properly equipped. Rec. 480. Such a variation is altogether unusual and we think, unheard of on the Lakes. Rec. 477.

3. *The record shows so many errors and contradictions in Sloan's testimony as to render it of but little weight.*

Thus at Rec. p. p. 97, 104, he says he grounded one eighth of a mile below Ricord's.

At page 95, he fixes the spot as being down in the "bight of the Bay." At p. p. 98 and 110 he says that when the collision took place he was five or six lengths of his vessel below Ricord's dock.

Now if he grounded one-eighth of a mile below Ricord's he was far out of the bay and not in the *bight* of the bay. And if the boats collided six lengths of the Dove from the dock the accident must have happened *below the place of grounding.*

Again: In the libel he swears that *when he saw the Mayflower*, the Dove gave two blasts of her whistle, stopped and backed, and although close to the American channel bank, in order to give the Mayflower more room she *put her wheel astarboard*! At page 97 he says, *no* order was given when the the light of the Mayflower was discovered; and at p. 105 he says he did not then try to avoid the collision; that the light when discovered was fully a point on his port bow and there was no need of taking measures to avoid a collision. And in his deposition he swears that he put his wheel *aport* to avoid the force of the blow from the Mayflower, instead of *astarboard* as stated in the libel. In the libel he swears that he ran the Dove on the Canadian shore because that was a better shore to ground her upon. At page 111 he substantially contradicts this statement by saying, that he tried to get her upon the American shore and that he had no idea of getting her on to the Canada shore. And see Rec. 102, his

attempt to explain the statements of the libel and the reckless manner in which he swore to it. No other witness in the case has contradicted himself so often and so directly; and there is none whose testimony should be regarded with greater suspicion.

4. *That the course of the vessels were not as claimed by the appellee is shown by the angle at which they come in contact.*

It is admitted that the Dove was struck on her port bow.

HALLIMAN, p. 138 says, "We hit the Dove on the port bow. She ran mostly square across our bows across the river."

MATE WOODRUF, at 201, says the angle was about seven points.

GLOVER, p. 68, says the Dove was running across our starboard bow. She was heading rather across the Mayflower's course. Her bows were pointing toward the Canada bank. At p. 64, he says, we saw her port light over our starboard bow. This is one of the Dove's witnesses. He is corroberated by the captain, mate, and engineer of the Mayflower, all of whom say they made the Dove's lights three or four points over their starboard bow. See Rec. p. p. 183, 198, and 147. This testimony as to the lights, shows that the Dove could not have been in the position, nor upon the course sworn to by Sloan.

5. *And this is also more clearly shown by what took place when the Dove grounded below the dock previous to the collision.*

It appears from the evidence, that when the master of the Dove discovered that he was near the Canada shore, opposite Bury's dock, he changed his course across the river towards Ricord's dock, but in attempting to reach that place he grounded, some distance below, on the American shore. He was there compelled to stop. He says he ordered the wheel aport; that she swung a single point and then went ahead. Both he and his engineer say no order was given to back. ROBINSON, the wheelsman, CAMPBELL the lookout, HUBBARD and KIMBALL, passengers of the Dove are uncertain whether she backed or not. But FLETCHER, Rec. p. 80, says she "backed off and then went forward." DONALDSON, (Rec. p. 127,) who was assisting Sloan on the pilot house, swears that she *did* back; that her wheel was then ported; that she ran out a little way into the river, and then starboarded. See also Rec. p. 450. ROBINSON, wheelsman of the Dove, at pp. 162, 166, swears that he heard the signal to check, stop and back.

Nothing would be more natural, than that the master of the Dove, upon finding himself unexpectedly aground, should *back off*, and give the American shore a wide berth. Such a maneuver would be instinctive. The testimony of Donaldson is entirely consistent with what might have been expected.

6. *After the Dove got off the bank, she discovered the Mayflower's light; mistook it for a light at Ricord's dock; shaped her course for it, and so brought on the collision.*

That this mistake was made, is sworn to by SLOAN (Rec. p. 96), by DONALDSON, (Rec. 127), by FLETCHER, (Rec. 74.)

Seeing Mayflower's light—believing it then to be at Ricord's dock, where he wanted to stop, Sloan, in his ignorance, shaped his course directly across the bows of the descending steamer, and thus the collision occurred—an event which would never have happened, but for this most unpardonable blunder.

7. *If the officers of the Dove made the Mayflower's light off the Dove's port bow, as they swear they did, this fact is evidence that the Dove was not then upon a course N. by E.*

It is admitted that the Dove was hit on the port bow. Now it is utterly impossible that this should have so happened, with the Dove upon a course N. by E., unless the Mayflower was sailing under a starboard helm,—a theory unsupported by any proof in the case.

If the light of the Mayflower was made on the port bow of the Dove, then, as the latter was hit on her port bow, she must have run across the course of the Mayflower.

8. *The testimony on the part of the Dove as to the locality of the collision, is not, as against the opposing proofs offered by the Mayflower, sufficient to show that it took place on the American side of the river.*

As already stated, we insist that to justify the decree of the Court below holding the Mayflower solely in fault, it is incumbent upon the appellee to show affirmatively, that the place of accident was on the American shore. But we submit that there are no such inconsistencies and contradictions to be found respecting the course of the Mayflower, as the record discloses in the proofs offered by the appellees, to show the course of the Dove. The course of the Mayflower to the place of collision, is made far

more clear than is the course of the Dove. It will be seen from the record that not a man on board the Dove saw the American shore from the time she left Marine City, until she grounded; on the contrary, the Canada shore was seen at Bury's dock, by Donaldson, her second mate.

The proofs on which the appellees rely, are as follows:

ROBINSON, wheelsman. p. 15, says the collision was near abreast Ricord's dock, on the American shore. P. 18. "I did not see it. Knew we were nearest that shore, because we were near on to it when Sloan stopped her, and also knew the course we were steering; judged from these two reasons."

It is manifest that this witness does not help the Dove unless he is correct as to the *course* sailed by her.

HUBBARD, a passenger, p. 20. *Judge* we were close to the American shore; could not say how far from the shore.

KIMBALL, passenger, p. 24. Familiar with the river; *thinks* the collision took place a little below Ricord's dock; *think* I could see buildings there.

This testimony is little better than mere guess-work.

DANA, 2d Engineer, pp. 27, 28. Was in bed at time of collision. Jumped up and ran to aft port gangway to see where we were. Then saw the shore, and a light in a house, up stairs, about 200 feet distant; Westbrook's house. The American shore nearest the place of collision.

This witness is not to be relied upon, for two reasons:

1st. At the time he says he saw the shore from the aft port gangway the boats lay along side each other heading on to the Canada shore, the Mayflower being on the port side of the Dove. This would prevent him from seeing the land from the Dove's port quarter.

2d. There was no light in Westbrook's house, nor in any house in that vicinity at that time. But there was one in Gray's house opposite, on the Canada side, and if Dana saw any light, it was this one.

See Westbrook, Rec. 430, 431.
Carey, Rec. 454.
Bowen, Rec. 439.

CAMPBELL, Dove's lookout, p. 51. "Thought we were on the

American side when we were hit, but did't know positively, as I did'nt see the land. Think now we were on that side when hit from the fact of our grounding in that bay just before. *Did not see American shore at all after leaving Mill dock.*"

BROADBRIDGE, p. 55. Was asleep in his room at time of collision. Can't say which way the vessels were heading. Could see tops of trees from the starboard side, on shore. Looking ahead and aft. off the starboard bow and port quarter I could see ladd; p. 56, could see tops of trees on *both* sides of the river, *did not observe which side appeared nearest.*"

FLETCHER, passenger, 74. Says he saw the American shore just after the collision the trees and the bank. Cross ex. p. 80 he says, "I mean I saw some land. The only reason for supposing it to be the American shore was because of the banks being high." But the *fact* is the American shore there is very low and flat, while the Canada banks opposite are bold and high.

WESTEWAY, Engineer, 87. Left his engine, just *before the collision;* stepped to the forward port gangway, about a minute. Could see a glimpse of the shore, that was all, turned and went back.

How could this man at the gangway see the shore previous to the collision, when neither the master, lookout, nor any other person on the pilot house or promenade deck could do so? The only other witness on the part of the Dove as to locality is

SLOAN, her master. At p. 97, he says he did not see the land, from the time the Dove grounded till she reached the place of collision. That just before the collision the fog was as thick if not thicker than at any time previous. P. 98. Did not see the shore at or about the time of the collision, but did see it shortly after and saw Ricord's dock. Think we were *five or six lengths* from the dock At p. 100, "*Collision took place very near Ricord's "dock on American side, I should not think the length of the Dove—* 190 *feet—from the bank.*" And in answer to the direct question, "How long after the collision did you see Ricord's dock?" he says, "*Just after* the collision, as the Mayflower was backing, as "she swung along this side I could see Ricord's dock and the "land on both sides, *perfectly plain. The moon came out shining "bright—a beautiful moonlight night.*" See also p. 110.

Now it is very remarkable that Sloan is the only witness in the case who testifies to its being "a moonlight night!" If "the moon came out shining bright," so that he "could see the land on both sides perfectly plain," why did not his lookout and every other man on the deck of the Dove see the same thing? And why did not the witnesses on the American shore who were aroused by the collision, and who looked out on the river to learn what was its cause, see the vessels or at least their lights. And yet Sloan swears to the fact *positively* and *voluntarily*. His assertion is unqualified. It is as direct and positive as any statement which he has made. *If it is true*, it goes very far to sustain the case of the Dove; but if it is *untrue* it goes very far to overthrow the credibility of the witness. That it *is untrue* is demonstrated by the fact that the collision occurred about 11 o'clock at night on May 31, (See libel, p. 1. Answer to cross libel p. 396, both sworn to by Sloan); and *the moon did not rise until a quarter past 12 o'clock in the morning, more than an hour after the Dove was stranded in Canada.*

See N. Y. World Almanac, for 1869.
" *N. Y. Tribune Almanac for* 1869.

9. *The fact that Dove grounded in Canada, is proof that the collision did not occur within* 190 *feet of the American shore as is claimed by Capt. Sloan.*

It is claimed by the appelle that Sloan tried to run the Dove upon the American shore, but failing to do this he was compelled to run her upon the Canada shore. There is however, but little evidence of this fact. Sloan himself swears, p. 111, that he "had'nt any idea of getting to the Canada shore, and at p. 100 that he did'nt care which side she would bring."

The force of the collision crushed the bow of the Dove in to midships, cutting her down to the keel. "It smashed the deck in nearly all forward. The deck was broken in, one-half to two-thirds of the way *across the bow toward the starboard side.*" Rec. p. 121. She was in immediate danger of sinking. The lives of passengers and crew were in peril. To get to the *nearest* land would be the instinctive act of those in charge. If the Dove was where Sloan claims she was, within 190 feet of the American shore,—her engine reversed and working backward,—do your Honors believe that he would have deliberately assumed the dangerous risk of running across a river three-quarters of a mile wide, in the night time, simply because there was "a better shore in Canada" to ground upon?

The only witness who says that any attempt was made to get the Dove upon the American shore is Sloan himself, and his testimony is too self-contradictory to be believed upon this point. Her wheelsman, it is true, says, that after the collision, her wheel was put astarboard. But as she was then heading toward the Canada shore, the reason for starboarding the wheel doubtless, was to prevent the current from carrying the boat down stream.

10. *The fact that after the Dove was stranded on the Canadian shore, those aboard of her saw the Mayflower and that those on board the Mayflower could see the Dove is proof that the collision did not occur on the American side of the river.*

The uncontradicted evidence is that the engine of the Mayflower remained stopped, from the moment of the collision until after the Dove was stranded. But for the current she would have remained stationary at the spot where the vessels struck. The river is three-fourths of a mile wide, and it would have been impossible for the boats to have seen each other, if the collision took place within 190 feet of the American bank. But,

ROBENSON, who was on the Dove, p. 163, says that after the Dove was stranded, he could see the Mayflower's lights and hull distinctly; thinks she might have been from 500 to 1000 feet distant from the Dove: "Where we were lying ashore I could see both the Mayflower's colored lights and her bright light."

CAPT. WOODWORTH, 186. "I could see the Dove distinctly after she fetched up. Should judge that the distance between the boats at that time would not exceed 400 feet."

J. WOODWORTH, mate, 217, says the Mayflower was started up after the Dove got on to the Canada shore; that the Dove was down the river a little in a diagonal direction and about a quarter of a mile from the Mayflower." And Capt. Woodworth in his deposition given upon appeal, p. 464, referring to his former testimony, respecting his offer to pull the Dove ashore, says he referred to the Canadian, and that he then saw *that* shore distinctly. There is no attempt to contradict these facts. See also Rec. p. 224.

11. *The movements of the Mayflower after the Dove was stranded, proves that the collision occurred upon the Canadian, and not the American side of the river.*

There is, I think, no dispute as to the fact that the effect of the collision was to swing the stems of both boats off toward the Canadian shore. They then lay side by side heading on to that shore. The Dove then backed, and then went ahead, passing the Mayflower on the latter's port side, and so went on the bank. During this time the engine of the Mayflower was not moved, and she remaided motionless until the Dove groun ed. (See Rec. 185.) Then the Mayflower desired to proceed down the river; and if she lay upon the American side, she could have easily turned so as to head down stream by, simply porting and going ahead. But the evidence is that she lay so near the Canada shore, that she was compelled to *back* right off into the river from one-eighth to one-quarter of a mile, so as to swing her head down the river. This movement was necessary simply because the boat was so near the Canada shore. Rec. p. 464. After heading down stream, the Mayflower kept the Canadian shore passing about 200 to 400 feet from Bury's dock, to Marine City, where she rounded to and stopped. Rec. p. 465. Had the collision taken place where the appellees say it did, the Mayflower would have been compelled *to run across* the river to reach Bury's dock.

No one pretends that she did any such thing.

The evidence, then, upon this branch of the case stands thus:

1. As to the course of the Mayflower below Bowen's dock.

a. Her master, mate and wheelsman swear positively that she *did so port* as to cross the river, but that she continued to follow the Canadian shore as a guide, to the place of collision.

b. On the other hand, Hawkins, Bowen, Newcomb and M. Hawkins are produced to show that she did change her course, and pass over to the American shore. But none of these witnesses had any interest in watching the vessel, or the course taken by her; and the circumstances were not such as to enable them to judge of her course with any degree of accuracy, had they made an effort to do so. Their testimony, at best, is a mere matter of opinion, amere matter of inference, and not a statement of any reliable *fact*. It should not, therefore, be allowed to outweigh the positive testimony of the officers of the Mayflower, which *must be either true or intentionally false*. The rule laid down in the following cases, applies strictly to the one before the court.

OLCOTT 495. THE NEPTUNE, where it is said, "Receiving with great distrust, the opinions and judgment of witnesses so circumstanced, the Court looks chiefly to facts stated by witnesses to have occurred within their personal knowledge. What a witness asserts he did at the time, or did not do, on his own vessel, is generally more satisfactory evidence of the fact than the opinions and belief of a dozen others formed from what they saw or heard on another vessel."

11. WALLACE 241, the FANNIE, adopts this rule, and in speaking of the alleged change of course of the vessel in that case, this Court say: "The man at the wheel was in a position to know whether the course was changed, and he could not be mistaken. It is not to be presumed that he changed the course of the vessel without orders. And the mate must know whether he gave any orders to port or starboard the wheel. The testimony of these witnesses, therefore, is not a *mere statement of an inference drawn from appearances.* In addition to this is the improbability of any change."

See also, as a further illustration, *The Wenona*, 19 *Wallace* 41. *The Magenta*, 2 *Abbott* 494.

2. As to the locality of the collision:

a. On the part of the Dove, Sloan, her master, Robinson, wheelsman, and Dana, engineer, swear that it occurred close to the American shore.

Campbell, lookout, Hubbard, Kimball and Fletcher, passengers, *think* it occurred nearest that shore.

On the part of the Mayflower, her master, mate and wheelsman, are all positive, from actual observation, that it occurred on the Canada shore.

Donaldson, second mate, and Robinson, wheelsman of the Dove, testify to the same fact; *and with them agrees every witness sworn in the case, who was on either shore opposite where the collision occurred.*

We submit that the weight of the testimony as to the course of the vessel and the locality of the collision, is clearly with the appellant; and that the Dove, in this respect, is clearly shown to have been in fault.

It is entirely certain, from the record, that the case of the libellants, as to the course of the Dove, and the locality of the collision, rests wholly upon their testimony respecting her *compass* courses. If their testimony upon this point is without foundation in fact, the Court will not hesitate to find that the officers and crew of the Dove were wholly ignorant as to their course, and as to the locality of the collision.

That she did not sail the courses sworn to by her master, is not a matter of doubt. The conceded facts of the case,—the geographical position of the river, its banks and channel, PROVE beyond the possibility ot a doubt, that it would be wholly *impossible* for the Dove to run the courses contended for by her counsel, and sworn to by her master.

III.

AS TO THE SPEED OF THE RESPECTIVE STEAMERS.

1. *The speed of the Mayflower was not illegal.*

The law does not define what, under all circumstances shall be deemed an illegal or improper rate of speed, but leaves the question to be determined according to the peculiar facts of each case as they arise.

Article 16, *Rules of* 1864, provides that, "every steamship when approaching another ship, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steamship, shall when in a *fog, go at a moderate rate of speed.*"

The usual speed of the Mayflower is about nine and one-halt miles an hour, to accomplish which she requires 55 lbs. steam—her usual amount;—under the law she is allowed to carry 62 lbs.

Merrill, Engineer, Rec. 150.

On her way down the river, until after she reached a point below St. Clair, and several miles above the place of collision, she ran at full speed, and as the current down to about St. Clair is very strong, the Mayflower undoubtedly passed along rapidly. But at the place alluded to, she encountered fog for the first time, and her speed was at once checked, and she then ran under a check.

See Woodworth, mate, 196,
Halliman, wheelsman, 137.

Upon checking, her steam was reduced to 40 lbs.

MERRILL, engineer, p. 150, says he reduced the steam from 55 lbs. to 40 lbs. directly after first checking her; and that when the light of the Dove was first discovered, the Mayflower was going at the rate of five miles an hour. P. 147.

CAPT. WOODWORTH, 185, says that her speed at that time was not more than from three to five miles an hour. Upon his cross-examination in the Circuit Court, p. 472, he says, her speed was about four miles an hour.

Upon discovering the lights of the Dove, an effort was made at once to stop and back the Mayflower.

CAPT. WOODWORTH, 184. "I *instantly* blowed three whistles as an alarm, and stopped my engine, and rung to back, which she did at once; the boat continued to have headway; she made, probably from 20 to 30 turns backing before the collision. She might have been going at the time the collision took place, from 3 to 5 miles an hour; not less than 3 nor more than 5."

MERRILL, engineer, 148, 152. Says substantially the same thing as to the orders to stop and back; that he obeyed the orders, and that the engine was reversed and working backwards at the time the boats struck. See also WOODWORTH, mate, p. 198.

b. That we ran under check until after we passed Bowen's dock, was admitted by the appelles in the Court below. But it was claimed that at that point, the Mayflower's speed was increased, and that she was running at full speed at the moment of collision.

As proof of this, they rely upon the testimony of the MATE, p. 214. GLOVER, 62, and the ENGINEER, 152.

But we insist that this testimony will bear no such construction. That of the mate is as follows:

"*Ques.* When the captain came upon the pilot-house, was there any order or signal given to the engine? *Ans.* After he had been up there a minute, or it might have been two minutes, it cleared up a little bit, and the remark was made that he would go ahead a little faster and get down to Marine City before it shut in thicker. *Ques.* You say the remark was made; did'nt he give the order? *Ans.* I don't recollect giving any order. *Ques.* Or signal to the engine? *Ans.* I think he did ring the engine to

go ahead a little stronger. The signal was four bells. *Ques.* That means all right? *Ans.* It means a little stronger. *Ques.* The signal was stronger? *Ans.* Yes, sir. She had'nt been unhooked coming down the river; they often check them down —shut the steam very low."

The engineer says that he got the order "to work her stronger, and obeyed it." GLOVER swears he heard the order when it was given.

And this is the *substance* of what is said by the mate. We do not deny that such *an order* was given. But what was its effect upon the speed of the vessel? *This* is the important question, and it is to be determined by the state of her engine and the quantity of steam she carried, and the distance she was at the time from the place of collision.

The evidence shows, that upon receiving the order to check, which was below St. Clair and several miles above the place of collision, the engineer *reduced* the steam from 55 to 40 lbs. Rec. 152. Her speed as we have shown while carrying this 40 lbs. steam, was from 3 to 5 miles an hour. Before she could gain ordinary speed, it would be necessary to work up the steam from 40 to 55 lbs., and before this could be done, the Mayflower "would run from three, to five or seven miles, according to the quality of her fuel." This is the testimony of her master, (Rec 465,) who also testifies, positively, that at the time he rung the four bells, the Mayflower had passed *Reynold's dock, which is but little more than half a mile above the place of collision.* At 479, he says that his engine did not make more than eight turns ahead under the order of four bells, before the light of the Dove was discovered, and then the order to stop and reverse was at once given. No attempt is made to contradict this testimony. And even if we lay aside the statement as to the number of revolutions made by the engine as erroneous, still the fact is established, that the Mayflower was *below Reynold's dock* when the four bells were rung, and this being so, it inevitably follows that there was not time enough for her to work up to 55 lbs. steam, or get under full headway before reaching the place of collision. The master and mate agree as to this See Rec. 216. No witness testifies to the contrary. We submit, therefore, that the record justifies the conclusion, that the four bells were rung so short a time before the collision, that the Mayflower's speed could not have been increased

to any considerable rate above what it was before the order was given.

a. Under the circumstances, the Mayflower was well warranted in going five miles an hour, and even at a higher rate of speed.

To determine this, reference must be had to the state of the fog along her course. Unless it was such as to obscure the vision, there was no necessity for the steamer to run at less than her usual speed, it appearing that the river was comparatively clear of other vessels.

It is shown that while near Ricord's dock, and for some distance below on the American shore, the fog was very dense and uniform, yet above that point there was comparatively little fog. It there lay in streaks or banks, and upon the Canadian side it was not nearly so dense as upon the opposite shore. This is shown by NEWCOMB, p. 35, who says that there was not a time when he could not see the trees across the river on the American shore, and that he saw the Mayflower's lights, above Hawkin's dock, or at a distance of nearly a mile. HAWKINS, 44, says that at his place he could see across the river. BOWEN, 48, says that he saw the Mayflower when she was half a mile below his place. J. HAWKINS, 38, that he could see the American shore across the river from where he was. These are all witnesses for the Dove.

On the part of the Mayflower, CAREY, who was on the Canadian shore, near the place of collision, and near the spot where the Dove grounded, says: p. 454, "There was a slight fog, but there was a heavy fog on the American side. I could see the river; there was a light fog. I could distinguish things half-way across. There was a heavy fog from the marshes on the American side." BROWN, 156, and WESTBROOK, 429, also say that the fog was less dense on the Canadian side.

The master, mate, wheelsman and lookout of the Mayflower, testify, that excepting at very slight intervals, they could see that shore all the time until the collision. The mate says, 218, 220, that at the time the four bells were rung, it had cleared up so that we could see the woods on the Canada shore, and the shape of the land ahead as far as Bury's dock, or nearly two miles ahead.

We believe that no case can be found in which a steamer has been condemned for running at the speed of the Mayflower, in a place like the St. Clair river, in a fog so slight as to enable objects to be seen two miles ahead.

d. Aside from the fog, there was nothing to prevent the Mayflower from running at her ordinary speed. The river was comparatively free from vessels. Its channel is at least three-fourths of a mile wide. With the exception of the Dove, there was no other vessel anywhere in the neighborhood. Before the order to go ahead stronger was given by the master of the Mayflower, the signal of the Dove had been heard, and answered, a number of times. That signal was from 3 to 4 points off the Mayflower's starboard bow. Rec. 147, 183, 198. It indicated no danger whatever, but safety, if obeyed. The officers of the Mayflower had a right to assume that the Dove would observe her own signal. Had she done so, there would have been no collision.

That the Mayflower's officers did so believe, and act accordingly, is proved by

WOODWORTH, mate, 209, who says that five or six signals passed between the vessels before he saw the Dove, and that he thought they were all right. He also says: "When I first saw the boat's light, I supposed she was off so well that she would notice we were all right, going down. Next to the last signal I blew, she had understood us, *and I didn't expect she was crossing over on our side of the river.*" P. 221, "When I first saw this light, says I to the Captain, that is the Dove over there; she has gone up the American shore, we are rid of her." P. 229, "I blew one whistle for the reason that I had seen the boat off so far on our starboard bow, that I supposed we were clear of her, and she had understood our signals, and was passing up the American shore." See also, p. 479.

GLOVER, lookout,--Appellees own witness substantially corroborates our mate as to the position and direction of the Dove, when at p. 64, he says, that, when he discovered the Dove, he saw her PORT light off the Mayflower's starboard bow.

Now, can it be said that upon a river three-fourths of a mile wide, with so little fog that the shape of the land could be seen nearly two miles ahead, with no other vessel in the vicinity but the Dove, and she sounding her signal off the Mayflower's star-

board bow,- a signal which was several times heard and answered, it was either careless or reckless for the Mayflower to run at five miles an hour? Had the place been a crowded harbor, like that of New York, or Boston, or Chicago; had it been a narrow channel or thoroughfare, thronged with vessels, a more moderate speed might have been demanded. Had the signal of the Dove been heard directly, or nearly directly ahead; or had that signal been a single blast of the whistle, instead of two; or had there been any misunderstanding of the signals of either boat as they were given and answered back and forth, there would be some plausibility in claiming that the Mayflower should have reduced her speed below five miles an hour. But none of these facts existed. The channel was wide and unobstructed, except by the Dove, and she upon the opposite shore, proclaiming by her signals her intention to *keep* that shore. The Mayflower answered these signals, and proclaimed that she would keep the Canadian shore. And had the officers of the Dove not disregarded their own signals, had they not, in utter ignorance of their course and locality, mistaken the white light of the Mayflower for a light at Ricord's dock, and sailed directly for it,—a blunder which the Mayflower could not have anticipated,—there would have been no collision.

The question of speed would have been wholly immaterial if one boat or the other had not been in a false position, under the signals which were given.

As to the Speed of the Dove.

The evidence shows that she was behind time at Marine City. She carried 40 pounds steam, only five pounds less than when running at full speed which is fourteen (14) miles an hour; (See testimony of her engineer, Rec. 84, 89.) This witness says that when the Dove grounded on the American side, he received the signals to check and stop her, and after this the signal to go ahead; and that he then received a further signal of *four bells to "hook her on," or run her at full speed.* And it is clear that she ran under the four bells until the moment of collision. At all events that the engine was not reversed so as to make more than three turns backward before the Mayflower struck her.

It is claimed, however, that notwithstanding the four bells were rung to go ahead at full speed, the engineer disobeyed the

order of the master and ran under a check. Rec. 84. But, we submit, that before this Court will believe this to be the fact it will require stronger evidence than the unsupported oath of this engineer. To disobey the order of the master would be *mutiny* on his part; but to obey it would be entirely natural. An engineer who should venture to disobey the orders of his master under the circumstances of this case would be unfit for his position. Had loss of life occurred, he would have been guilty of manslaughter. And, notwithstanding his testimony, we ask your Honors to believe that the engineer of the Dove, upon receiving the four bells from the Captain in command, at once opened out the engine and ran his vessel at full speed.

d. But the decisive test of the respective speed of the two boats, is the effect of the colliston upon each other.

The record shows that they collided at an angle of from one to two points, the Mayflower hiting the Dove on her port bow, and that the effect of the blow was to turn the stems of both boats across the river, so that they headed towards the Canada shore. The effect of the blow must have stopped both engines; and the boats lay side by side, the port bow of the Dove being against the starboard side of the Mayflower. In other words the collision *neutralized or destroyed the momentnm of both boats.*

See Rec. 184, 185, 186, 224, 464.

Now the Dove is a light side-wheel steamer, whose draft is only about six feet. The Mayflower is a much larger vessel; was heavily loaded and is from six to ten times the size and weight of the Dove. Rec. 98. At full speed she would have been going at not less than from nine to ten miles an hour; and with the current, not less than from twelve to thirteen miles an hour. Her momentum, therefore, would be very great. And, if as the appelles claim, the Dove was close to the American shore, and nearly or quite at a stand-still at the moment of collision, with her engine reversed and working backward, and the Mayflower going at full speed, the effect of the collision would have been very different from what it actually was.

Under such circumstances, the Mayflower would have *crushed the Dove through and through like a nutshell, and sunk her on the spot*, or else she would have shoved her around, out of her way, or driven her upon the American shore. Had the Mayflower been

running at anything like full speed when she hit the Dove, the latter would never have been able to sail *clear across* the river, from shore to shore, as is claimed she did after the collision.—Nothing can be more evident upon the simplest natural laws, that if the Dove had not been running at a very high rate of speed, the collision could not have forced the Mayflower from the course which she was on, around toward the Canada shore and stopped her,—especially, as at the moment of collision her wheel was put hard-a-port. See upon this point the uncontradicted testimony of Capt. WOODWORTH taken in the Circuit Court.

Rec. 466. 467, 468.

We submit, that under the evidence it is impossible to avoid the conclusion, that the speed of the Dove was much greater than that of the Mayflower, and that she was in fault in this respect.

And considering the state of the fog along the course of the Dove, and the fact that it was so dense that no object was seen by any man on her decks, from the time of her grounding until the white light of the Mayflower was discovered, this fault on the part of the Dove assumes an unusual magnitude.

IV.

THE MAYFLOWER WAS NOT IN FAULT FOR WANT OF A PROPER LOOKOUT.

1. The allegations of the libel are not sufficient to sustain a decree against the Mayflower for want of lookout, even if the fact was proven by the evidence. The decree must be *secundum allegata et probata.*

Conkling's Adm'r. 596, 597.

The libel should contain a specific averment of want of a proper lookout, to justify a recovery upon this ground.

2. Our regular lookout was sick, and his place was supplied by Glover, a passenger. This was the best we could do, and it is all the law requires. Rec. pp. 60, 204. But it is claimed we were in fault because this lookout was sent into the pilot house to help the wheelsman, and was not kept on the main deck, forward. To this we reply, that he could see as well *forward* from the pilot house, on this occasion, as from the deck. And the fact affirma-

tively appears that Glover did see the light of the Dove in ample time. Rec. 64.

3. The Captain was on the pilot house in command. The first mate was with him at the time of collision and previous thereto, acting as lookout. From this position the mate could see as well, and even better than he could if stationed on the deck forward. Had there been a man on the deck forward, he could not have seen the light of the Dove as soon as the mate did from the pilot house. Rec. p. 181, 198. This is proven by what occurred on the Dove. Her Captain and 2nd Mate were on the pilot house, and her lookout Campbell, was on her main deck forward, yet the latter did not see the Mayflower's light until a ter it was seen from the Dove's pilot house. Rec. 96, 128. This is undoubtedly explainable by the fact that the fog settled, and was more dense next to the water.

It is claimed by appellees, that the Dove had "two competent lookouts attentive to duty." One of these was Campbell on the main deck, the other her second mate on the pilot-house with her master.

This *second* mate was stationed the same as our *first* mate, and doing the same thing. If he was a competent lookout, was not our first mate a competent lookout? It is also claimed that the fact tha her second mate was on the pilot-house with her master, is evidence of "extra precaution," on the part of the Dove. If this be so, does not the fact that the Mayflower's *first* mate was on the pilot-house with her master, show equal precaution on the part of the Mayflower? If our first mate was an incompetent lookout, then the second mate of the Dove was also incompetent. The incompetency of Campbell, as lookout, is proved by Capt. SLOAN'S own testimony. At page 101, he says Campbell "was no sailor-man," but a good man to tell when he saw a light. We submit that no lookout is competent who "is no sailor-man," and that he must be of such experience as not only "to tell when he sees a light," but to be able to determine the course and movements of a vessel by her lights. In other words he should be a competent sailor.

4. The record shows that the want of a lookout on the Mayflower, in no wise contributed to the disaster and therefore she should not be condemned, even if there had been none on board assigned to that duty.

The Faragut, 10 *Wall.* 334.
The Favorite, 11, *Wall.* 238.

RECAPITULATION.

—o—

AS TO THE MAYFLOWER, WE CLAIM THAT THE EVIDENCE FAIRLY ESTABLISHES THE FOLLOWING FACTS:

1st. She had competent officers and crew, properly stationed and attentive to their duties.

2nd. She had a competent lookout. If Glover was improperly in the pilot-house, the first mate, being *on* the pilot-house was acting as lookout and properly stationed.

3rd. That the collision was not the result of any want of lookout on the Mayflower.

4th. That as soon as she encountered the fog, her steam was reduced from 55 to 40 pounds; her speed checked from nine and one-half to four or five miles an hour.

5th. That the order to increase her speed, or go ahead stronger, was not given until so short a time before the collision, as to materially affect her speed before she saw the Dove.

6th. That as soon as the lights of the Dove were discovered, the engine of the Mayflower was at once reversed and backed.

7th. That the force of the blow from the Dove turned the Mayflower from her course around toward the Canadian shore, and that she lay heading upon that shore until the Dove grounded there.

8th. That the signals of the Dove, were heard and answered repeatedly.

9th. That the course of the Mayflower was down the Canadian side of the channel, and that the collision occurred on that side of the river.

AS TO THE DOVE.

1st. That she did not keep the American shore, as it was her duty to do.

2nd. That after grounding below Ricord's dock, she changed her course toward the centre of the river, and that while on that course, she sailed directly across the Mayflower's bows, having mistaken the Mayflower's light for a light at Ricord's dock.

3rd. That her lookout, Campbell, was incompetent.

4th. That she ran at full speed from the time she grounded below Ricord's dock, until the collision.

5th. That the fog along her course, was such as to prevent her officers and crew from seeing the American shore at any time before the collision.

6th. That the testimony of her master and wheelsman, as to her compass course, is wholly unreliable.

7th. If the Mayflower was in fault in *any* respect, the Dove was equally in fault in respect to her speed, course, and lookout; and the damages therefore, should be equally divided.

But we submit that no fault is proven against the Mayflower, and therefore the decree of the Court below should be reversed, and a decree rendered in favor of the appellant for the damages claimed in the cross-libel. D. B. Duffield

F. H. CANFIELD,
G. V. N. LOTHROP,
Counsel for Appellant.

ADDENDA.

The cause was heard upon the libel and cross-libel *as one suit*, by the District Court, and a decree was there rendered, dismissing the cross-libel, and adjudging the Mayflower to be in fault, because, in the opinion of the District Judge, she was upon the American side of the river at the time of the collision; and referring it to a commissioner to ascertain the amount of the damages suffered by the libellants as owners of the Dove. Upon filing the report of the commissioner, a final decree was entered against the respondent, as owner of the Mayflower, who thereupon took his appeal to the Circuit Court. But the Clerk in making up the transcript, failed to return the cross-libel and answer thereto. This transcript was filed in the Circuit Court, May, 1. 1872, and the cause was placed upon the docket, for hearing at the then next June term, (Rec. 183—4,) and it was continued to the October term.

On December 10th, of the October term, the libellants and appellees filed in the Circuit Court a petition for leave to file a supplemental libel, (Rec. 366,) which was granted; and accordingly a supplemental libel was filed, the substance of which was a claim on the part of the libellant, that the dismissal of the cross-libel by the District Court, not having been appealed from by a separate appeal, the question of negligence as to the cause of collision and become *res adjudicata*, and, therefore, *that* question could not be reviewed by the Circuit Court. The order under which this supplemental libel was filed, also directed the Clerk of the District Court to make a further return in the cause, by certifying to the Circuit the cross-libel and the proceedings relating to the same as a part of his return under the appeal which had been taken in this cause.

To the supplemental libel an answer was filed, claiming that the cross-libel was a part of the original suit, to recover the counter claim due to the respondent on account of the same identical collision as that set forth in the original libel.

By leave of the Circuit Court, the cross-libel was amended so as to show more clearly upon its face that it is a cross-libel, "filed upon respondent's counter claim for damages arising out of the collision, respecting which the original libel was filed," &c. (Rec. 422–23.)

The Circuit Court heard the cause upon its merits as to the cause of the collision, thus substantially denying the prayer of the supplemental libel.

This action by the Circuit Court was correct. The plea of *res adjudicata*, which the libellants seek to interpose can not be sustained.

1. The libel and cross-libel are proceedings in one and the same cause. They were both transfered to the Circuit Court by the appeal as taken. The term, *cross-libel*, imports that it is filed as a proceeding in a cause already pending. A *cross-libel* is as well recognized in admiralty, as a *cross-bill* in equity. Its purpose is the same as a cross-bill in equity—viz., to enable the respondent to obtain the affirmative relief which he is in justice entitled to, but which he cannot recover under his answer to the original libel.

It is so recognized by General Admiralty rule 54, which should be considered as putting to rest, any doubts which may have formerly existed upon this subject. This rule was adopted December 1868, and is as follows: "Whenever a cross-libel is filed, upon any counter claim arising out of the same cause of action for which the original libel was filed, the respondent in the cross-libel shall give security in the usual amount and form to respond in damages as claimed in said cross-libel, unless the Court, on cause shown, shall otherwise direct, and all proceedings upon the original libel shall be stayed until such security shall be given."

The cause is recognized as upon libel *and* cross-libel, the same as in equity a cause is recognized as upon bill *and* cross bill.

Such is the manner in which this cause has been treated in the courts below.

Rec. 11—404—406—7—8—9—16—21—23—92—93—501 503—504—536.

The decree, therefore, dismissing the cross-bill, was not a final decree, and could not be appealed from.

Ayers vs. Carver, 17 *How.* 591.
Fleece vs. Russell, 13 *Ill.* 31.
Parrish vs. Galloway, 34 *Ala.* 445.

Any other rule of practice would be attended with insurmountable difficulties.

a. The decree dismissing the cross-libel and referring the claim for damages under the original libel, was made on the 7th day of March of the November term of 1871. Under the rule the appeal must have been taken during that term, and the cause upon the cross-libel might have been heard in the Circuit Court, in June following, while the case upon the original libel was yet undisposed of in the District, as the *final* decree, fixing the amount of damages, was not rendered until April, 1872.

b. Suppose the Circuit Court had disagreed with the District, as to the cause of the collision, and had reversed the decree dismissing the cross-libel? The status of the parties would have been this: In the Circuit, the owner of the Mayflower would have had a decree for damages against the owners of the Dove; while in the District, the latter would have had a decree in their favor against the owner of the Mayflower!

In the Circuit, the Dove would have been condemned, as being in fault, and in the District the decree would have passed against the Mayflower. Two appeals to the Circuit, and two appeals to this Court, involving four hearings upon the same identical question of fault, would be the result of any other rule than that for which we contend.

c. It is against the just and equitable principles upon which Courts of Admiralty administer justice, to allow the libellants the benefit which they seek to gain under the plea of *res adjudicata* contained in their supplemental libel.

The Alhambra Brow. Lush, 286.

Instead of disposing of the case upon the principles of natural justice, which the Admiralty always seeks to do, the libellants seek to have it disposed of, upon what, under the circumstances, is the merest technicality.

d. The action of the Circuit Court in treating the libel and cross-libel as one suit, was merely a matter of discretion, which is not reviewable, even had a special appeal been taken for that purpose. *A fortiori*, therefore, can it not now be reviewed or complained of by libellants, no appeal having been taken by them.

The case of *Merrill vs. Petty*, 16 *Wallace* 338, upon which the libellant relies, was essentially different from the one at bar. That was a collision between a sloop and a schooner. The owners of the sloop instituted a suit *in rem* against the schooner, wh" the owners of the latter commenced one *in personam* against the owners of the sloop. The first suit was commenced in the *Southern* District of New York;—the latter in the *Eastern* District. Being in different courts, it is impossible to claim that they constituted one suit, or were at all analagous to a case of libel and cross-libel, and this Court so decided. Pages 346, 347. The very fact that one suit was *in rem*, and the other *in personam*, precluded them from being treated as one suit. A suit *in personam* cannot be engrafted upon a suit *in rem*,

The Citizens' Bank vs. Nantucket Steamboat Co. 2 *Story'* 57–8.
The Hope, 1 *W. Robinson* 155.
The Valiant, 1 *W. Robinson* 388.

The practice in the District Court where this suit was commenced, is in accordance with the rulings in the cases cited. In the case of the Young America, decided by Judge Longyear, during the past year, but not reported, it was distinctly held that where four vessels were engaged in a collision, it was improper for the libellant to proceed in one suit against two of the vessels *in rem* and against the owner of the third *in personam*. There is, therefore, not only a strong reason for holding that the doctrine for which we contend could not apply to the case of *Merrill vs. Petty;* but that it would be in violation of a well established rule of practice to hold otherwise.

D. B. Duffield

F. H. CANFIELD,
G. V. N. LOTHROP,
Counsel for Appellant.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1874.

THOMAS PITTS, Executor of H. Norton Strong, deceased,
Claimant of Steamer Mayflower, Appellant,

vs.

RIVER AND LAKE SHORE STEAMBOAT LINE,
Owner of the Steamer Dove, Libellant.

Appeal from the Circuit Court for the Eastern Dist. of Mich.

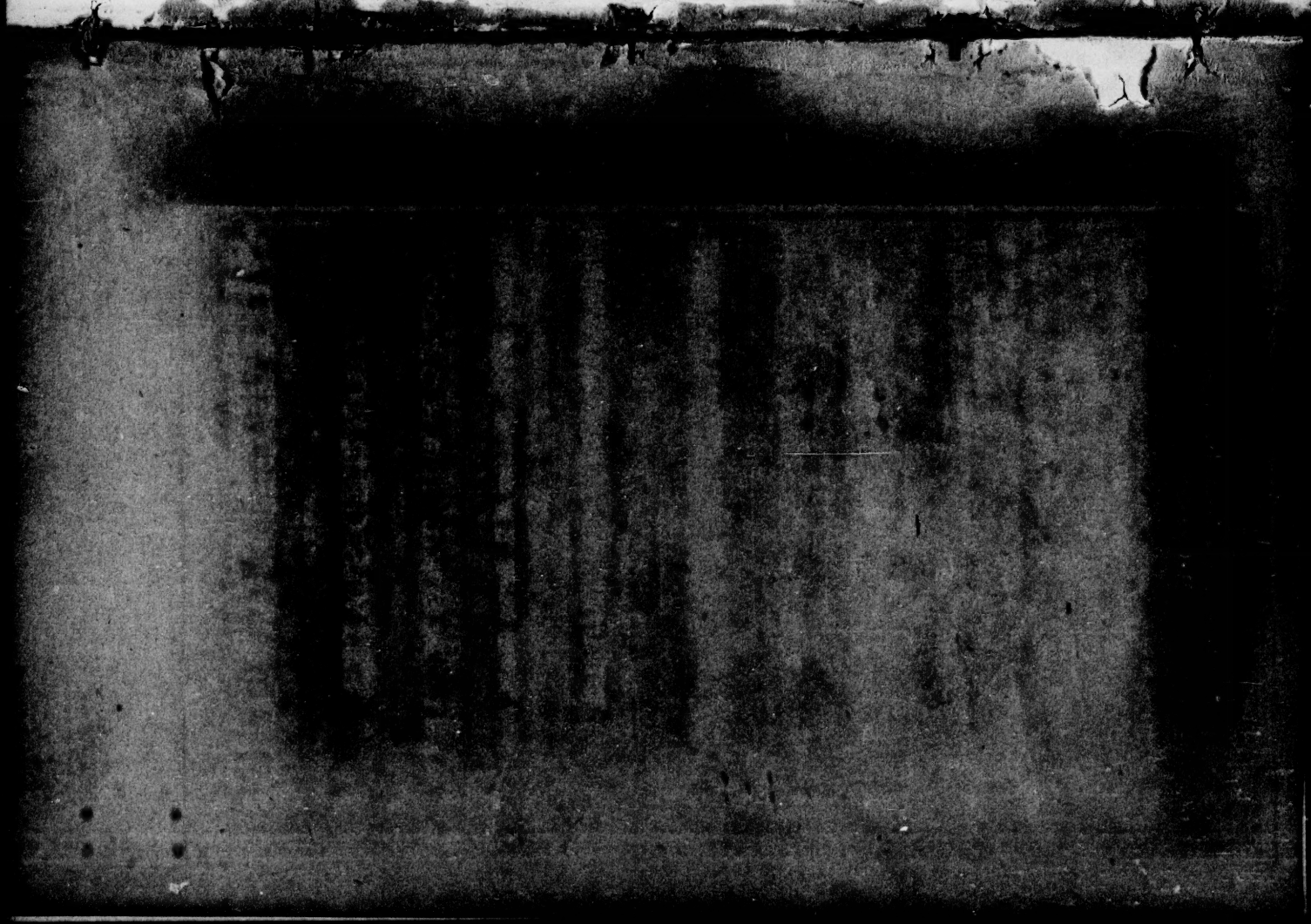
IN ADMIRALTY.

BRIEF FOR LIBELLANT AND APPELLEE.

NEWBERRY, POND & BROWN,
Proctors.

H. B. BROWN,
W. A. MOORE,
Advocates.

DETROIT.
O. S. GULLEY'S STEAM PRESSES, 10 & 12 LARNED STREET, EAST.
1875.



SUPREME COURT

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OCTOBER TERM, A. D. 1874.

THOMAS PITTS, Executor of H. Norton Strong, Deceased,
Claimant and Appellant,
vs.
THE RIVER AND LAKE SHORE STEAMBOAT LINE,
Libellant and Appellee.

IN ADMIRALTY.

Appeal from the Circuit Court for the Eastern District of Michigan.

BRIEF FOR LIBELLANT AND APPELLEE.

Libel and cross libel *in rem* for collision.

A preliminary question of some importance arises in this case upon the following facts, and will be disposed of before the argument upon the merits.

On June 17th, A. D. 1869, The River and Lake Shore Steamboat Line, owner of the steamer Dove, filed its libel for collision against the propeller Mayflower, claiming $18,550 damages. An attachment was issued, the vessel seized and bonded.

On the 22d day of June, A. D. 1869, H. Norton Strong owner of the propeller Mayflower, filed his answer to the above libel and also a cross libel against the Dove, claiming damages for the same collision in the amount of $19,000.

An answer was also filed to the cross libel.

On the 26th day of April, A. D. 1870, both causes came on to be heard together upon the libel, answers and depositions, (folio 404).

On the 7th day of March, A. D., 1871 both causes were decided upon the merits. In the case of the River and Lake Shore Steamboat Line against the propeller Mayflower it was decreed that the libelant recover from the Mayflower the damages occasioned by the collision and it was referred to a commissioner to ascertain and report the amount (folio 237). In the case of Strong against the Dove it was decreed that the libel be dismissed with costs (folio 409).

No appeal was taken from the decree dismissing the libel of Strong vs. the Dove.

On the 29th day of April, A. D. 1872, a final decree was rendered upon the commissioners report in the original suit of the River and Lake Shore Steamboat Line against the propeller Mayflower for $14,114.62 (folio 362).

An apyeal was taken by Strong from this decree (folio 356).

On the 9th of December, A. D. 1872, leave was granted by the Circuit Court to the original libellant to file a supplementary libel setting forth the above facts and claiming that Strong was estopped by the decree in his case against the Dove to deny that the collision was occasioned solely by the negligence and fault of his officers and crew (page 185 and 186).

On December 13th, A. D. 1872, respondent (Strong) filed his answer (page 201) to the supplementary libel admitting, in general terms, the facts stated in the libel and claiming that during all the progress of the suits his libel was treated by counsel and by the court as part of one cause with the original libel, and that libellant was estopped to deny that his libel was a cross libel and as such to be treated as a part of the original cause.

He also filed a petition that an order might be entered allowing his libel to be amended so as to show upon its face that it was a cross libel (page 203). Objection was made that the Court had no power to order such amendment, the decree dismissing the cross libel not having been appealed from, but the amendment was permitted (folio 482). The amendment is contained in folios 486 and 487.

There is practically no dispute about the facts. Such as do not appear in the record of the cases are stipulated in folios 490 and 491 and are substantially as follows:

1. Separate libels and answers were filed in each case.

2. But one set of depositions were taken and these were entitled in both causes.

3. The journal entries in the cases contained on pages 196 to 200 were single but were entitled in both cases. These entries sometimes speak of them as *these causes* (folio 404) and sometimes as *this cause*.

4. At least four of the journal entries were entitled "Strong vs. the Steamer Dove."

5. The cases were tried and argued together upon the same testimony: but one opinion was delivered in which the libel against the Mayflower is spoken of as the "original libel" and the one against the Dove as the "cross libel."

6. Separate decrees, however, were entered in each case. The interlocutory decree against the Mayflower is found in folio 237; the final decree against the Dove is found in folio 409.

I.

THE RESPONDENT (STRONG) HAVING FAILED TO APPEAL FROM THE DECREE OF THE DISTRICT COURT DISMISSING HIS LIBEL AGAINST THE DOVE IS ESTOPPED BY SAID DECREE TO DENY THAT THE COLLISION WAS OCCASIONED SOLELY BY THE FAULT OF THE MAYFLOWER. THAT QUESTION IS NOW RES JUDICATA.

We do not deem it necessary here to discuss the ques-

tion whether Strong's libel against the Dove was in fact a cross libel. The question rather is, *do the libel and cross libel together constitute but one suit, or are they in fact separate suits?* Although argued together upon the same testimony, no order of consolidation was ever made.

Counsel rely upon the case of *Ayers vs. Carver*, 17 Howard, 591, where it was held that a cross bill in equity should be disposed of in connection with the original bill and that the decree dismissing the cross bill alone is not final and no appeal lies therefrom.

There is, however, little analogy between a cross bill in equity and a cross libel in admiralty.

A cross bill "is brought either to obtain a discovery of facts in aid of the defense to the original bill, or to obtain full and complete relief to all parties as to the matters charged in the original bill." It is "auxiliary to the proceeding in the original suit and a dependency upon it." "The decree, whether maintaining or dismissing the bill, disposes of a proceeding simply incidental to the principal matter in litigation, and can only be reviewed on an apeal from the final decree disposing of the whole case." *Ayres vs. Carver*, supra.

Story's Eq. Pl., sec. 389.
Cross v. De Valle; 1 Wall, 1.

On the other hand, a cross libel in collision cases is used to obtain affirmative damages. Though a respondent be entirely free from fault and his damages be greater than that of the original libellant, he can obtain no decree in his favor without filing a cross libel.

A cross bill is a mode of defense.

2 Dan. Ch. Prac., 1648, 1649.
Mitford's Eq. Pl., 81.
Story's Eq. Pl., sec. 389.
Field vs. Schieffelin; 7 Johns. Ch. 250.
Gallatian vs. Cunningham; 8 Cow., 361.
Cartwright vs. Clark; 4 Met., 104.

A cross libel is never necessary for the purpose of defense.

A cross bill can only be filed by special leave of the court, and if not filed before or at the time of the answering in the original suit. the delay must be accounted for or the proceedings will be stayed.

2 Dan. Ch. Prac., 1650.
White vs. Buloid; 9 Paige, 164.
Cartwright vs. Clark; 4 Met., 104.

There are no such limitations to the filing of cross libels. Under rule 54 they may be filed at any time, and it is not unusual for them to be filed even after the decree in the original suit.

Wms. & Bruce; Admy. Prac., 255,
The Calypso Swab., 28.

Cross bills in equity always arise from matters of contract. A cross libel in admiralty is very rarely used except in cases of tort. Cross actions of trespass, at common law, are much more nearly analogous to cross libels in admiralty. We are not aware that it has ever been claimed that cross actions of trespass were in fact one suit.

The statutes authorizing the consolidation of causes apply only where several suits are pending by the same plaintiff against the same defendant or where several suits are commenced against joint and several debtors in the same court. We can find no precedent for the consolidation of cross actions for collision. The practice upon this subject seems to be confined exclusively to cases where different libellants have similar causes of action against the same respondent. The act of Congress upon the subject of consolidating causes (Revised Statutes, page ,) throws very little light upon the matter and virtually leaves it to the discretion of the court to make such orders and rules as shall be conformable to the principles and usages belonging to courts.

The English law upon this subject seems to be well settled. It is the practice for solicitors to agree in cases of cross libels that the decision in one case shall govern the decision in the other, but until recently the court had no power to insist that such an arrangement should be made. But by the

34th section of the Admiralty Court act of 1861 it is provided that the court may, upon the application of the defendant in any cause of damage, and on his instituting a cross cause for damages sustained by the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence. It also adopts the practice of Admiralty Rule 53 providing that on filing a cross libel the court may suspend the proceedings in the principal cause until security has been given.

Williams & Bruce; Adm, Prac., p. 75, 254.
Cootes Admiralty Practice, page 115.

The statute gives the court no power to order the pleadings in one cause to be used in the other, but in order to save the expense of duplicate pleadings it is not unusual for the parties to agree that the pleadings and proofs in the original cause shall be used as the pleadings and proofs in the cross cause.

Williams & Bruce, Adm. Prac., p. 254.
The Calypso Swab, 28.

The Elizabeth, L. R. 3, Ad. and Ec. 33.

Suit was commenced in the city of London court by the owners of the Elizabeth against the owners of the Adalia. At the same time a cross suit was instituted in the same court by the Adalia against the Elizabeth. The causes were heard together upon the same evidence. In the case against the Adalia the court dismissed the cause. In the other case the court decreed that the Elizabeth was solely to blame. The owners of the Elizabeth appealed both causes to the High Court of Admiralty.

The owners of the Adalia moved to dismiss the appeal in the cause in which they were plaintiffs on the ground that the damage sustained by her did not exceed £50. By statute there could be no appeal unless the amount decreed to be due exceeded £50. The owners of the Elizabeth opposed the motion and moved the cases be consolidated, claiming that as the two suits were heard together on the same evidence they

were practically one suit and there was no good reason why each party might not have the same right of appeal.

Sir Robert Phillimore held that the two suits could not be considered as one "any more than if they had been respectively instituted in different county courts." "This position is further confirmed by the practice on appeals from the High Court of Admiralty in which cross suits which have been together have been treated as separate with respect to the institution of the appeal." He held that the appeal should be dismissed whenever it was made to appear satisfactorily that the amount of damage did not exceed £50. See also

The Vortigern; Swab. 518.
The North America; Lush. 79.

In both these cases the action and cross action are treated as different causes, and such seems to be the settled English practice.

No direct adjudication can be found in the admiralty reports of this country. It is believed, however, that the uniform practice in all the districts has been to treat the libel and cross libel as distinct actions, and that appeals are taken upon this theory. This practice certainly seems to be sanctioned by adjudications in this court.

Merrill vs. Petty, 16 Wall 338.

Owners of the sloop Ethan Allen libeled the schooner Mary Eveline in the *Southern* District of New York, claiming $3,489. Owners of the Mary Eveline libeled the owners of the sloop for $2100 damages in the *Eastern* District of New York. The case in the Eastern District was reached first when both cases, by consent of counsel, were heard together on the same facts and the same proofs, without, however, any attempt to consolidate, in form, the two proceedings or to transfer the proceedings in the Southern District into the Eastern. The result was that the libel *in rem* against the schooner in the Southern District was dismissed *in that district* while in the personal proceeding in the Eastern District a decree was rendered against the owners of the sloop for $1,792.84. Decrees were then en-

tered in both courts and from both of the decrees the owners of the sloop appealed. Both causes were affirmed in the Circuit Court but the damages in the personal action were reduced to $1,292.84. Both cases appealed to this court. Motion was made to dismiss the appeal in the personal proceeding on the ground that the amount did not exceed $2,000. Mr. Justice Clifford, in dismissing the appeal for want of jurisdiction, intimated that even if the record contained evidence of an agreement that the two cases should be heard together it could not avail the respondents, "as it is settled law that consent cannot give jurisdiction." "On the contrary, though they were both heard at the same time it appears that separate decrees were entered each in the respective district court where the suit was commenced." The case seems to have been rather a hard one, as in the suit against the Mary Eveline the decree was reversed and judgment was entered for the libellants.

Ward vs. Chamberlain. 21 How. 572.

In this case there was an agreement between the parties in the court below that the answer of the respondents should operate as a cross libel. The court remarked that this proceeding was unusual and did not meet its approval, and ought not to be drawn into a precedent. "Respondents in a pending libel have a right in a proper case to institute a cross libel to recover damages against the libellants in a primary suit, but they should file their libel, take out process and have it served in the usual way."

There is certainly nothing in this case giving countenance to the theory that the libel and cross libel are one suit.

See also

Nichols vs. Tremlett; 1 Sprague 362.
The Sapphire, 18 Wall 51.

The 53d rule of this court providing for a stay of proceedings in the original suit whenever a cross libel is filed indicates the only safe and proper practice.

We submit, then, that the appellant having failed to appeal from the decree of the District Court dismissing his libel

against the Dove is estopped by that decree from claiming here that the Mayflower was not solely to blame for the collision in question.

The remaining questions in the case are purely of fact. Both the Circuit and District Courts concurred in holding the Mayflower solely in fault for this collision. The testimony is very voluminous and somewhat conflicting. The case was argued at great length in both the lower courts, and the opinion of the District Judge contains an exhaustive review of the evidence on both sides.

The law is well settled that where the District and Circuit Courts concur upon questions of facts, this Court will not reverse unless it be clearly shown they were mistaken.

U. S. vs. 112 Casks of Sugar, 8 Pet., 277.
The Quickstep, 9 Wall., 665.

The collision occurred on the 31st of May, 1869, between 11 and 12 o'clock P. M., nearly opposite Ricord's dock, so called, in St. Clair river. The night was dark and foggy, although the fog was not constantly dense, but settled down upon the river in banks or streaks, sometimes lighting up a little and again settling down thick, so that the shores were not visible.

THE "DOVE."

The "Dove" was a side-wheel steamer of about 350 tons burden—was bound upon one of her regular trips from Detroit to Port Huron, laden with passengers and a partial cargo of general merchandise.

Shortly before the collision she left Marine City intending to stop at Ricord's dock, two or three miles above, upon the American side of the river. As she left Marine City, the fog lifted so that the shore could be seen on both sides of the river

as well as the trees back of Ricord's dock. After leaving the wharf at Marine City she headed straight for Ricord's dock, keeping her course due north. Very soon after the fog shut in and hid the shore upon either side of the river.

She had her usual signal lights up, in good order and burning brightly. Her master, Sloan, was on the pilot-house, Donaldson, the wheelsman, and acting second mate, was with the master on the top of the pilot-house, acting as additional look-out and blowing the whistle. Campbell, the regular look out, was on duty forward. The wheelsman and engineer were at their proper posts.

More than ordinary precautions were taken on account of the fog. After leaving Marine City she ran under check and very slowly, sounding two whistles at short intervals to give notice that she was going up the American side. These signals were the customary and legal ones, and were heard and understood by the "Mayflower," and both vessels intended to act upon them.

When from an eighth to a quarter of a mile below Ricord's dock, the "Dove" ran so near the shore that she touched, or "smelt," the bottom. Her engine was stopped, her wheel ported one point until she headed north by east, when she proceeded on her way, running slow and under check.

About this time she heard the two whistles of a descending boat, made the white light of the "Mayflower" from half a point to a point on her port bow, immediately rang to stop and back, and as a collision was seen inevitable, put her wheel hard a port and had nearly come to a stand still when the Mayflower, running at nearly or quite full speed down the current, came into her nearly end on, crushing her bow and ultimately causing her to sink. The angle of collision was about half a point, or a little more.

Whether the collision occurred upon the American or Canadian side of the river is the principal point in dispute. Immediately after the collision, the force of the blow having swung the "Dove" so that she headed away from the American shore and partially toward the Canadian shore, her master, Sloan, saw she must sink, and put his wheel hard a star-

board in hope of swinging her on to the American shore just below Ricord's dock, but finding his boat would not obey her helm on account of her bow being bent to starboard, and that she was swinging slowly toward the Canadian shore, he put on full steam and ran her aground upon the Canadian sid of the river.

THE MAYFLOWER.

The Mayflower was a propeller of large size, and at the time of the collision was bound on a trip from Chicago to Buffalo, loaded with a cargo of grain and flour. It seems that she intended to stop at Marine City, where her master lived. As she came down the river she kept the American side part of the time, and a part of the time the Canadian side, the witnesses not agreeing exactly on this point. Prior to the collision she was blowing signals of two whistles, passing vessels in the river, some say on one side and some on the other. She passed Port Huron about 10:30 P. M., and reached the place of collision, about eighteen miles below Port Huron, shortly after 11 P. M. The time made by her indicates that she must have been running at full speed.

For two or three hours before the collision she had no look-out, although running in the river, and at times through a dense fog, constantly meeting vessels. About a mile above the place of collision she passed not far from Haughan's or Bowen's dock, on the Canadian shore, exchanging with the "Dove" signals of two whistles. The vessel at this time was in charge of the mate. Very soon after leaving this dock, however, the master came on deck, and although he could see neither shore had no look-out, and knew a steamboat was approaching, signaled his engineer to go ahead stronger, or at full speed. The order was obeyed, and up to the moment of the collision she continued at the same speed.

While standing beside the mate upon the top of the pilot-house, he had a dispute with him as to their exact locality in the river. The mate told him, as he subsequently testified, that the boat was about the middle of the river. The captain told

him he thought he was nearer the American shore, or, as he said, near Ricord's dock. While still hesitating with regard to their position, they suddenly made the light of the Dove at a distance of less than 400 feet, with her engine stopped and backed, and, as libellants claim, nearly or quite at a standstill. The bell of the "Mayflower" was rung to stop and back, but almost instantly thereafter, and before her headway was practically lessened, she struck the "Dove" upon her por. bow at an angle of about half a a point as above stated.

The above facts, we believe, are practically undisputed.

It is claimed the Mayflower was in fault in the following particulars:

1. *In crossing from the Canadian to the American side of the river while continuing to give signals of two blasts of her whistle, indicating that she was still on the Canadian side.*
2. *In having no proper lookout.*
3. *In running at too great speed.*

It is also claimed that the Dove was in fault in the following particulars:

1. *In attempting to cross the bows of the Mayflower and pass her on her port hand instead of keeping to port on the American side of the river and passing the Mayflower on her starboard hand, as it was her duty to do under the signals of two blasts which she was giving.*
2. *That she was running at too great speed, although this is not averred as a fault in the cross libel.*

Other faults are charged both in the libel and cross libel, but the argument of the case in both the lower courts was confined to those above specified.

The main questions of fact are:

1. *The locality of the collision.*
2. *The speed of the Dove.*

It will be observed that the first fault claimed as above upon both sides turns upon the question whether the collision occurred upon the American or the Canadian side of the river.

If, as a matter of fact, the Dove was ascending upon the Canadian side of the river, then she was in fault for blowing

signals of two blasts each, indicating that she was upon the American side. If, upon the other hand, the Mayflower was coming down upon the American shore, in ignorance of her true position in the river, she was likewise in fault for making the same signals. The opinion of the District Judge (folios 515 to 536) is confined almost exclusively to the discussion of this question and we shall proceed at once to argue this, the most important point in the case.

II.

THE COLLISION OCCURRED UPON THE AMERICAN SIDE OF THE RIVER AND WITHIN TWO OR THREE HUNDRED FEET FROM RICORD'S DOCK.

Without discussing this question we should feel ourselves entirely safe in simply referring to the very exhaustive review of the evidence upon this point made by the District Judge in his opinion. We will, however, briefly recapitulate the main facts which point to this conclusion :

1. *There is no doubt that the Dove in leaving Marine City upon the American side intended to stop at Ricord's dock also upon the American side, and laid her course for this point immediately upon leaving the wharf.*

Upon this point see the testimony of

John A. Sloan, Master of the Dove.

Folio 95. "At the time we left Marine City it was clear enough so you could see a clump of woods up at Ricord's dock, and at the same time you could see the land over at Bury's dock, and I shaped her course and headed her right along there.

Folio 96. "I had some freight for Ricord's dock." * * *

Q. "You intended to touch at Ricord's dock?"

A. "Yes, sir; we always slow along at these way points, right close, to see if we can get anybody out."

Albert H. Robinson, Wheelsman.

Folio 13. Says, in substance, that after leaving Marine City he followed the docks along the American side up as far as the old mill dock and that he was headed north.

Folio 16. He says we had been heading north which leads us in shore."

Folio 18. He says he knew they were nearer the American shore because we were very near to it when Sloan stopped her and he also knew the course he was steering.

Joseph M. Hubbard, Passenger.

Folio 18. "We ran a good distance along the docks on the American side." "Judged about 200 feet from the shore."

Henry Campbell, Lookout.

Folio 50. "We followed the shore after leaving Marine City all the way up, as I supposed." "We ran right along by Gallagher's mill dock which is in the upper part of Marine City and about half a mile above where we stopped."

John S. Fletcher, Passenger.

Folio 72. Says in substance they went right up the bank of the river on the American side; that he knows it because he was standing on this side as they were going up, running near the land, just before the collision.

2. *There is no doubt, and it is virtually conceded, that a few minutes before the collision the Dove touched, or "smelt," the bottom on the American side, from one-eighth to a quarter of a mile below Ricord's dock. It is also proven that at this time several persons upon the Dove saw a clump of trees back of the dock; others saw lights on the American shore.*

Albert H. Robinson, Wheelsman.

Folio 13. Speaks of a conversation between the master and lookout, in which one of them said, "What is that?" and the other replied, "I think it is the shore." "The bells were rung then to check her and to stop."

Folio 16. "When I checked and stopped, before we got the order to port, I cannot tell whether the Dove had actually touched bottom. My opinion is she was pretty close in, though I don't think the Dove's head went near the bank." "I do not know whether she touched or not." "Don't know what Captain Sloan may have seen to induce him to back, if he did so back." "I also thought that he was too close in shore, and stopped her or hauled her out a little to avoid running aground, as any man would."

Joseph M. Hubbard, Passenger.

Folio 19. "Was in the cabin when Captain Sloan stopped the boat and I went out to see what the trouble was. I found the Dove under check and on inquiring they told me the reason was that they were near the shore." "Should think we were then eighty rods be-

low Ricord's dock. I calculated then we were on the shoal which I knew was below the dock."

Folio 20. "Just before the collision Kimball remarked about seeing trees and buildings on the American shore and I looked and said yes." "Should judge we were close to the American shore at the time of the collision." "Can't say if the Dove actually touched bottom on the shoal. I knew there was a flat running out there. There are no woods close to it that would keep you off them." "I do not know at all as the Dove backed from the shoal; think she went along and sheared off."

George Kimball, Passenger.

Folio 23. Says in substance: They passed very close along to the old mill dock on the American shore; that he went outside at the time he thought she touched bottom, and was sure the boat was stopped; that he heard Hubbard ask some one what was the matter and the reply was that she had touched bottom; could not see the land at this time but saw it on the American side a few minutes afterwards; that he saw buildings and some trees.

Folio 24. Thought the collision took place a little below Ricord's dock; I think we could see the buildings there; we had been running up pretty close to the American shore.

William H. Dana, Second Engineer.

Folio 27. Jumped out of bed at the moment of the collision and ran to the after port gangway; saw the shore and a light in a house apparently somewhere in the neighborhood of two hundred feet distant; the light was up stairs; was at the after port gangway about half a minute after they struck, just as soon as I could get there.

Folio 28. "The American shore was nearest the place of collision; know this because I saw the American shore and know the river well enough to know when I am near to either shore."

Folios 28 and 29. Says he knows the light was in the second story because it was up so high; he could see the roof of the house; that he thought the house was about a hundred feet from the bank; thought it was Westbrook's house; sure it was a white house; saw a wood colored house this side of it; don't know how many chimneys there were on it; I could tell it was a house and not a barn because I know the house there.

Henry Campbell, Lookout.

Folio 50. "Says: "We nearly ran aground; heard the captain and Donaldson both say that we were nearly aground in that bay between Ricords and Marine City on the American side of the river."

Folio 51. "After we were said to be aground they stopped the engine and swung off the bank; I supposed she was aground and

swung off the bank because they did not work the engine; don't think she went on the ground, but only touched and swung off.

John S. Fletcher, Passenger.

Folio 73. Says we could see the shore at the time they grounded, that is, the fog seemed to lift about the time we went on, just after she struck; that they remained there but a short time before they got off; that they came very near to a dead stand still; at the time they grounded he could see the shore distinctly; that she was keeping as near up to the shore as she could; that just after the collision the fog seemed to lift right up so he could see the trees and the bank

Folio 79. Says he did not know whether he felt the vessel's keel rub against the bottom, but he felt her sway over, kind of roll over as you would roll a cask over; formed the opinion from the feeling of the boat as she was rolling over; think she backed off instantly and then went forward; says he could see the shore at that time.

Folio 80. Knew it was the American shore because the land was higher upon that side than upon the Canadian shore.

Folio 82. The shore that I saw immediately after the collision was not the same shore as that upon which we subsequently grounded.

John Westaway, Engineer.

Folio 86. Says that immediately before the collision he stepped to the forward gangway on the port side to look to see if he could determine where they were and also to see how thick it was; got a glimpse of the shore

John A. Sloan, Master.

Folio 98. Says at the time he left Marine City, it was clear enough to see a clump of woods up at Ricord's dock, and at the same time he could see the land at Bury's dock on the Canada side; that there is a curve in the river, and in running straight up from Marine City to Ricord's the boat passes nearer to Bury's than to the American shore; that he went in close at the upper end of the town, and headed for the inside of Ricord's dock; that he asked the man at the wheel how he was heading. He replied, north, and Sloan told him to keep her so; that he looked at the compass and saw she was heading north. It shut down thick a short time after that, and got very thick. That continued until we brought up on the bank. We did not fetch up on bank, but merely touched. Boat was then stopped, but no order to back was given. The vessel heeled down a little. She swung off a little. He then asked the wheelsman which way she was heading and he answered, N. by E.

Folio 96. We then went ahead. I was giving my attention to the American bank. I could see it. I was looking on that side all the time.

Folio 97. Says he could see the land at the time he got close in to the bank and touched. Could see the loom of the trees at Ricord's. There is a bunch of trees there. Then it shut down thick again.

Folio 99. Says the collision took place very near to Ricord's dock, on the American side, he should think, the length of the steamer Dove (190 feet) from the bank. Just after the collision, as the Mayflower swung along side, I could see Ricord's dock and the land on both sides perfectly plain.

Folio 104. Says he should think he touched the ground about one eighth of a mile below the dock.

Folio 109. He gives the reason for saying that they were near Ricord's dock at the time of the collision, from the fact that just as he got off the ground the weather lit up so he could see the trees back of the dock, and his course from that place would have led him very near to the dock.

3. *Prior to touching the bank the course of the boat had been north; her wheel was then ported and she took a course N. by E. and kept it until the collision. This course would take her to the exact spot claimed by us as the locality of the collision.*

See upon this point testimony of

Albert Robinson, wheelsman. Folio 14.

John A. Sloan.

Folio 96. I stopped her and put the wheel aport, and she swung off a little. Wheelsman answered that she headed N. by E.

See also folio 97.

When they first made the Mayflower's light it was supposed to be a light at Ricord's dock.

Folio 96. I saw a white light from half a point to a point on our port bow, and I had some freight for Ricord's dock, and he says to Donaldson, "There is the light on Ricord's dock."

Henry Donaldson, sworn for claimant.

Folio 127. Says he straightened her across the River from Bury's dock for Ricord's, or as near as we thought we could fetch it. Instead of fetching Ricord's dock, we fetched below it. There is a low, marshy place there where we fetched up. As we got her straightened up the river, about that time we heard two whistles. The captain told me to answer them, and I answered them. We heard two more whistles, and before this time I saw a bright light on the propeller about the second time I whistled. The captain spoke to me and said he thought that was a propeller lying at Ricord's dock, and I answered the two whistles. When we came to the marshy ground that

I have mentioned, I can not say whether we touched ground or not, we were very near it. He also swears that he saw some logs there, right by the shore.

Also see folios 130 and 134.

A reference to the map will show that if this testimony is to be believed, it is utterly impossible that the collision could have taken place upon the Canadian side of the river. It is true the wheel of the Dove was put hard aport an instant before the collision, but this was after the light of the Mayflower had been seen, and when she could not have been more than two or three lengths off. Her course was not changed by this. To have reached the spot claimed by the Mayflower as the locality of the collision, it would have been necessary for the Dove to take a course at least four points further to the east, and almost directly across the river. This is not only entirely unsustained by the facts as proved, but is inconsistent with the admitted intention of the Dove to stop at Ricord's dock. It will be borne in mind that the proofs are entirely agreed that the collision occurred nearly opposite or just below this dock. As the District Judge remarks: "Unless the testimony of the master and wheelsman as to the course of the Dove before and after her grounding are wilfully false, there is no escape from the conclusion that she was very near Ricord's dock at the moment of the collision."

4. *The testimony of several persons upon the bank of the river at the time points to the same conclusion.*

James B. Newcomb.

Folio 32. Says that he was on the river spearing fish in a boat opposite his house, which was on the Canadian side of the river, about half a mile from the dock; he saw the Mayflower pass him about the middle of the river, opposite his house; he first saw her light up the river pretty near the Canadian shore, but she was making her way through the fog towards the American shore. He heard the crash of the collision; she seemed to be near Ricord's dock; when I first saw the light of the Mayflower, I thought she was going to stop at Hawkin's dock; she seemed very close in there; Hawkin's dock is somewhere near a mile above mine; when she passed me I judged she was point-

ing across the river; from where I saw her light first and from where I saw her when she passed me, she must have made a considerable across the river during that time; when I first saw the Dove's light, she appeared to be on the American shore; I heard her whistle, and that whistle sounded on the American shore.

James Hawkins, son of the proprietor of Hawkins' Dock.

Folio 35. On the Canadian side, about a mile and a quarter above Ricord's; he was then in his father's house, about a hundred feet from the dock; he had his head out of the window watching the Mayflower; he heard the boat whistle; put his head out of the window, and saw her within 150 feet of the dock; as she passed she kept right down until she got a little below Bowen's dock, when she changed her course right for Ricord's; I saw her until she got a little better than half way across; when I last saw her she was heading as I supposed right on to Ricord's dock; right abreast of his father's dock she blowed one whistle; when she got pretty near the other side of the river she blowed two whistles; he remarked this to another young man with him—noticed the boat was going wrong according to her whistle, and remarked there would be some fuss there, and very soon after heard the collision; from the direction of the boat's whistle, he judged she was in the bay below Ricord's dock; the crash appeared to be near the dock.

See also folio 38.

Michael Hawkins, father of the last witness.

Was out fishing that evening, nearly a mile below his dock on the Canada side of the river, and from a quarter to a half mile above Gray's dock. Witness has marked with a red pencil the place where he was fishing.

Folio 40. He heard the Dove blowing her whistle across the dock in Ricord's bay, but could not see her on account of the fog; he then went up the river to his house, saw the Mayflower coming down as he stood on the beach near his house; she passed quite close to his dock, so close that he could see her hull, and took a course direct for Ricord's; he lost sight of her when about half way across the river; she was then heading for Ricord's dock, was about half a mile below his dock; he heard whistles from both boats very short and quick, and in a second after heard the collision; the whistles and the crash of the collision seemed to be on the American side, just below Ricord's.

William Bowen, owner of Bowen's Dock, as marked on the map.

Folio 48. At the time of the collision was at home and in bed; occupied a room looking out on the river; was awakened by hearing the whistle of a boat going down; got up and looked out of the win-

dow; saw the Mayflower, her white and both her colored lights; she passed within three or four hundred feet of his dock, and after passing seemed to be going in the direction of Ricord's; when he saw her last he judged she was about in the middle of the river, about half a mile below his place; in order to get over on the Canada side opposite Ricord's when he last saw her, she would have to get around and change her course entirely. Heard the whistle of both boats; sounded as if coming from Ricord's.

Opposed to this we have some testimony of similar character, taken on behalf of the claimants.

Joseph Brown, of Sombra, Canada.

Folio 155. Live nearly opposite Ricord's dock, from two to four hundred feet from the water's edge, on a bank 12 or 15 feet high; went to bed at nine o'clock; was aroused by an unusual noise; stepped to the front door and saw the lights of the two boats on the Canadian shore; slept in the lower story in a rear bedroom; the noise that aroused me was unusual; could hardly account for it until I went to the door; went to the front door without dressing; he dressed and ran down to the bank and found the Dove with her stem on the beach.

Anna Brown, wife of the preceding witness.

Folio 158. Heard the boats whistling as she lay in bed; then heard the crash; jumped and ran to the door; saw the lights of the boat on the Canada shore, a little below her house; the lights were moving slowly down the river.

This testimony proves nothing, except that after the collision the boats drifted over upon the Canada side, which is not denied. It is entirely uncertain how long it was after the collision that they saw the lights, although they seemed to think it was a very short time. Being waked suddenly from their sleep, they could not speak definitely. It throws no light upon the spot where the collision actually took place.

Calvin A. Blood.

Folio 160. Was on the dock at Marine City when the Dove passed up; after she passed, was engaged on the propeller Plymouth, and while there heard the crash of the collision; estimated the time at ten or fifteen minutes after the Dove passed; thought when he heard the crash that it was some boat coming down which ran into Bury's dock, on the Canada side.

This testimony is of absolutely no value. The collision took place three miles above Marine City. Between Marine

City and the place of collision, the Canadian bank makes a sharp curve to the westward, throwing Bury's dock almost in a line with Ricord's so, that he might well suppose the crash occurred at Bury's dock, when in fact it occurred at the other. Independently of this, however, the attempt to fix the exact locality of a collision by the noise heard by a person three miles off is absurd.

Thomas S. Gray.

Folio 169. Proprietor of the dock opposite Ricord's, on the Canadian shore, though the record says the *American* shore; was in bed in his house about two rods distant from the water; collision woke him up; thought the boat had run into his own dock; a neighbor came by shouting when witness put on his clothes and hurried out as soon as possible; saw the lights of the vessels, and thought they were nearer to the Canadian than to the American shore; first saw them before he dressed; after dressing, ran down to the bank; did not think he jumped out of bed immediately when awakened, for he was very sound asleep; would not like to say it was much as a minute; looked out of the window and saw the lights; would have noticed if they had been very near the Canadian shore; Joseph Brown, the preceding witness, came along, and witness went with him to the place where the Dove grounded; supposes he was deep asleep, and was just gathering his senses when Brown came.

This testimony throws very little light upon the case, as it is left entirely uncertain how long after the collision he saw the lights. He was evidently very much confused, and only states indefinitely that they seemed nearer the Canadian than the American shore. A very considerable time must have elapsed before the witness Brown came along, as he had time to dress himself and pass Gray's house, which was a quarter of a mile from Brown's. By this time the Dove had grounded.

John B. Ricord.

Folio 173. Was in bed and asleep in a house on the American side, near Ricord's dock. House was on the road, two rods back from a fence and five rods from the water. The noise of the collision awoke him. He got up, raised the window, and looked out, but saw no lights. Thinks if two steamers had been lying abreast of the dock he could not have failed to see the lights. He formed the opinion from the noise that the collision was on the other side of the river, or nearer the other side than the American. There were warehouses

on the dock, which would interfere with a view of the river below his house, but not directly opposite. If the boats were below the buildings would interfere with a view of them. The fog was so thick he could not see the lights.

His testimony throws no light upon the matter. For a person to point out the locality of a collision, the crash of which awoke him from a deep sleep, is evidently impossible. The fact that he saw no lights argues nothing, as either the fog or the buildings might have hid them even if they had been on the American side of the river.

Joseph Ricord.

Fol. 177. Resides near Ricord's dock, about 150 feet from the river, a little above the dock--35 or 40 rods above. Was in bed in a front room in the first story; opened the door, went out, heard the noise and a good deal of talking; could not understand what was said; noise appeared to come from a direction nearly south or southeast; could not see any lights. By the talk and noise of the crash he judged they were nearly half-way across the river; might have been nearer—might have been farther; first thought it near the centre.

His testimony, if it is of any value whatever, supports our theory of the case. From the direction from which the noise came, and from the very fact of his hearing persons talking, it is evident that when he first went out the vessels were still on the American side.

William E. Westbrook, Folio 426.

Attempts to impeach some of libellant's witnesses, by stating that he saw no lights upon the water that evening, although he was out. Referring to the fisherman, also states that witness Newcomb's reputation for truth and veracity is bad. On cross-examination, however, his own character appears to be far from spotless. He had been spending the evening with a woman of bad reputation and, as he says, had gone out upon the dock "to cool off." Two or three other witnesses testified as to the statements made by Newcomb and as to his general character for truth and veracity, but as Mr. Newcomb's testimony was of comparatively little importance, that which seeks to impeach it is of much less.

5. *The testimony with respect to the angle of collision com-*

pletely disproves the allegation and theory of the cross-libel that the Dove exhibited only her red light to the Mayflower, and was crossing her bows nearly at a right angle. (*Folio* 382.)

Fletcher (folio 74) exhibits the angle at which the vessels came together (not reproduced in the record), and says: "I thought, in the first place, she was going to strike the bow almost straight."

Capt. Sloan says they struck nearly end on. (Folio 97.)

Joseph Nicholson, marine inspector, examined the Dove after the collision, and gave it as his opinion that the vessels came together nearly end on (folio 118,) and demonstates they could not have come together at right angles.

William Morris, ship-builder, witness for claimant, makes a diagram on the chart, and makes an angle not exceeding 1½ points from head on. (Folio 232.)

Josiah Woodworth puts it at 40 degrees, though his diagram is not given in the record.

(Folio 208.) He says:

"She loomed up out of the water as if she had been raised there, seemed as if she had come right up there out of the water. I could see the whole shape of her, and seen *all her lights burning and heading towards us, red, white and green. I seen every one of her lights.*"

This was clearly impossible, unless the vessels were meeting nearly end on.

Nelson Woodworth swears they hit at nearly a right angle, but states the course of the Mayflower at south or south by west, while the proof shows clearly the Dove was heading north by east, making a difference of two or three points instead of eight points—a right angle.

6. *The time the Dove was running after the collision, and before she grounded, indicates they were a considerable distance from the Canada shore.*

Hubbard

Puts it at six to eight minutes. (Folio 20.)

Kimball

About ten minutes (fol. 24); long enough to run the whole width of the river.

Newcomb

Says from five to ten minutes time; enough to cross the river, or two thirds of it, anyway. (Folio 33.)

Michael Haughans

Says seven or eight minutes. (Folio 42.)

Campbell:

Struck the shore fifteen to twenty minutes after the collision. (Folio 51.)

Broadbridge:

From the time I was called by the lookout until the Dove struck the bank was about fifteen or twenty minutes. (Folios 56 and 58.)

Fletcher

Says six to ten minutes. (Folio 75.)

Westaway

Says he ran far enough to cross the river—four or five minutes. (Folios 86–89.)

Sloan

Says they ran across the river.

Donaldson

Says they fetched up ten or fifteen minutes after the collision.

It is true that little reliance can be placed upon estimates of time, but the concurring testimony of all these witnesses shews the Dove must have run a considerable distance, and not 100 or 200 feet, as claimed.

7. *There is nothing definite in the testimony of the officers or crew of the Mayflower which conflicts with our theory as to the locality of the collision.*

It may be assumed for the purposes of this argument that the Mayflower in descending the river kept generally upon the Canadian side until she reached Bowen's dock, about one and a quarter miles above Ricord's. Her course prior to this

time is of no consequence in this case. The testimony indicates that a portion of the time they were on the American side and a portion on the Canadian. It is claimed, however, that when she was about passing Bowen's dock her helm was ported and her course changed so as to carry her across the river. An inspection of the map will show that this was a shorter route to Marine City, and one of the witnesses on the shore swears that steamers frequently, or usually, took that route. The material testimony of her officers and crew upon this point is as follows:

Josiah Woodworth, Mate.

Witness was officer of the deck until the master came up a few moments before the collision.

Folio 195. Bowen's dock had a large fish light that showed a glare almost across the river through the fog; he here heard the Dove sounding signals of two whistles; evidently the vessels were here put into communication with each other.

Folio 197. Witness says we might have given and received six signals prior to the collision, it might have been four, it might have been five; I cannot tell; there were more than three; the vessel was evidently ahead down the river, apparently upon the American shore; when I first heard them it was before I got to the wood dock; we had to haul her away to keep her away from the bank. About this time the master seemed to have come upon the deck and taken charge of the vessel though the witness states that he remained upon the pilot house with him until the collision. He says he made a light which proved to be the Dove's three or four points on his starboard bow.

Folio 198. As for me to state correctly and positively which way we were heading by the compass I cannot do it, but I can tell you to the best of my ability where I think the boat was at the time; I cannot tell positively about anything; I supposed that the boat, as near as I could calculate in any shape, was as nearly the middle of the river as she could be; if I had been called upon for the positive fact of the matter, should think from what I have seen previous to this she would be a little nearer to the Canada shore, but I could not tell, because at the time of the collision, and for half a minute after that, I could not see either shore.

Folio 199. They were three or four hundred feet away, may be more or less, when I first saw them; our vessel was as near as I could calculate in the middle of the channel; I could not say whether on one side of the river or on the other.

Folio 200. *Q.* Do you ever take a straight course across from

Haughan's dock across the reach to Marine City? *A.* I don't know as I ever did—to be sure that I have ever taken that course; there are no ranges that I have run by; in the St. Clair river the banks are very bold there; it is not very particular that we keep either side or any side.

Folio 205. *Cross-examination*—When I come down the St. Clair River I always come down as near as I can in the center of the river because there we have no trouble with shoal water or the boats swelling the bank; the better way to avoid it is to keep in the center of the river and then come down here from Bury's dock, and we generally haul down there when we are going to stop at Marine City.

Q. About what point did you haul out into the river?

A. When we come down that way we keep coming up near this dock where the fish light was, Bowen's dock; we had just passed it; we were just passing the dock and I just seen the light over the port quarter a little; we were speaking about it and I told him (the captain) that he just passed the light above Reynolds' dock and it was at that time when I was speaking about it it was so foggy we could not see anything; he might have been out on the pilot house before that.

Q. Did not he ask you where you were and was not that when you told him you saw a light astern?

A. He might have said something in that kind of way; if he asked me I could not have told him.

Q. You did tell him you saw that light astern?

A. Yes, sir, and we just passed the light a few minutes before.

Q. State whether you had any conversation about where you were in the river?

A. I told the captain we had just passed the light there, just a minute before on the upper deck, and I headed her down the river just as near as I could just in the center.

Folio 207. *Q.* Did not he say something to you he thought you were nearer the American shore?

A He might have said something of that kind at the time, but I did not know, and I know no other person could judge at that time where the boat was, neither on one side or the other; he might have said it was at Ricord's dock, but I know he could not know, nor no other living person, on which side she was.

Q. What I want to know is was there not some conversation about being near Ricord's dock?

A. Yes, sir.

Q. Between you and the captain?

A. Yes, sir; *I admit that there was.*

Q. State all the conversation there was as near as you can recollect.

A. I can tell the purport of the conversation; I know there was something said about it at the time; he did not and could not see the shore neither one side nor the other, and I simply told him after he had made some remarks that he had seen this light, that I had steadied the boat down the center of the river as near as I could; this was right away after he came up on the pilot house.

Folio 211. He says in substance: In coming down to Haughans we are obliged to port a little to clear the bank, and after I got there I had no more to do with the vessel; we had to port, of course, to get into the middle of the river. I told the man at the wheel to keep her steadied to the compass; what point of the compass that was I don't know.

Folio 213. I cannot tell how many points I ported; I merely calculated to haul her off the bank; I would not undertake to state anywhere within two or three points.

Folio 215. Witness states that in his judgment the collision took place thirty or forty rods below Ricord's dock.

Folio 221. He says: "When I first saw the Dove's light I spoke to the captain; says I, "that is the Dove over there; she has gone up the American shore, we are rid of her," and blowed one whistle.

Folio 229. When I blowed this one whistle I had a conversation with the captain; says I, "that is the Dove going up on the other side of the river; I guess she is going to stop at Ricord's."

This is somewhat singular testimony, to say the least. It shows, substantially, these facts: that when passing Haughn's or Bowen's dock, upon one of which there was a fish light, probably the one the witness Haughn's had been using, the captain comes on deck in the midst of a fog so thick that neither shore could be seen, and while the Mayflower was exchanging signals with the Dove, supersedes the mate in the command of the vessel, has a dispute with him as to which side of the river they are upon, the wheel of the propeller having been ported no one seems to know how many points. In this conversation it is intimated and seems to have been pretty well understood by both that they were pretty near Ricord's and upon the American side of the river—both parties agreeing that the whistle of the Dove is on the American side and that she is probably going up with the intention of stopping at Ricord's.

Nelson Woodworth, Master:

Folio 182. As I heard two whistles off our starboard bow, I went from the hurricane deck to the pilot-house, where my mate

stood. About a mile above where the collision took place I went on the pilot-house, and here I heard a whistle; the sound of the two whistles off my starboard bow fully the points.

Folio 133. When I first heard the Dove's whistle, and answered it, the Canadian shore was distinctly visible, and I do not think it was over one hundred feet from the channel bank, keeping as close to it as I could keep. We proceeded down the Canadian shore as close as we could, and when we saw a light it was fully three points on my starboard bow; my vessel has heading about south—a little west—south by west, and the Dove was heading southeast by east. I should judge nearly northeast when they came together.

Folio 192. Q. Did you state in that protest, about two miles above Marine City, and in about mid-channel, we heard a steam whistle ahead, or about two points off our starboard bow?

A. If it is there I presume I did.

Folio 180. I was about the promenade deck from the time we came into the river St. Clair until we got dswn about abreast of St. Clair. It then became that foggy that I considered there would not be too many on the pilot-house if there was a couple there, so I got on the pilot-house and took charge of my vessel about off St. Clair; it must have been three-quarters of an hour before the collision.

It is clear from this testimony that the captain knew nothing about the exact locality of the collision. In one place he states he came on deck a mile above where the collision took place; in another he puts it opposite St. Clair and three-quarters of an hour before the collision—the boat in the meantime making nearly full speed. It is true he states in general terms that he kept down as near the Canadian shore as he could, but from the time of passing Bowen's dock he is evidenty at a loss to know exactly where he was. This evidently corroborates the statement of the mate as to the dispute between them about their location. We think the Court must come to the same conclusion as the District Judge, that "the officers in charge of the Mayflower were entirely uncertain in their own minds as to the whereabouts of their boat in the river, or just how she was heading in reference to the chanuel."

Thomas Halliman, Wheelsman:

Folio 137. At the time of the collision my wheel was amidships; there was no alteration in my course from the time I heard the first whistle until the collision. * * * I could not form any judgment exactly how near we were to the Canada shore at that time; some-

where two-thirds of the river, I should think—I mean two-thirds of the river from the American shore over towards the Canada shore when the boats struck.

There is nothing in his testimony that indicates that he had any knowledge of his position in the river.

Charles Glover, "Supernumary Assistant Wheelsman," Sworn by Libellant.

Folio 61. Says in substance he recollects seeing a wood dock and a light, just before the collision, on the Canada side of the river; noticed a light just above the dock; spoke to the wheelsman about it; asked him if he saw it and he said he did; heard some one go up on top of the pilot house; supposed it was the captain; *this was after we had passed the wood dock.*

Folio 62. *Q.* State whether the course of the vessel after passing the wood dock was toward or away from the Canada shore?

A. It was away; we lost sight of the shore after leaving the wood dock.

Folio 63. He says, in substance, he heard the talk between the captain and mate after passing the dock, when they were on the top of the pilot house; heard the mate say they were in the middle of the river. "I don't recollect the exact words, but the captain said they were nearer the American shore; this was about two minutes before I saw the Dove's light."

This testimony fully corroborotes that of the mate with regard to the conversation between him and the master, which, it will be borne in mind, is not denied by the master himself. Glover was in a position to hear this conversation, being directly beneath them, and he also corroborates the testimony of witnesses on the shore who swore that after leaving Bowen's dock the Mayflower bore off from the Canada shore to the center of the river.

This is substantially all the testimony there is on behalf of the Mayflower with reference to the locality of the collision. We submit that it falls very far short of meeting the case made by the Dove. Indeed, the evidence falls little short of a mathematical demonstration that the Mayflower did leave the Canada shore near Bowen's dock and steer directly for Ricord's. The master admits that he stated in his protest they were in the middle of the river when they heard the whistle of the Dove. The wheelsman states that

there was no alteration of the course from the whistle to the collision. The master swears his vessel was heading about south by west at the time of the collision and the chart shows, making some allowance for variations of compass, that the course so drawn is the exact course he was pursuing at that time.

III.

THE MAYFLOWER WAS GROSSLY IN FAULT FOR HAVING NO PROPER LOOKOUT.

We concede that she was not to blame that the person hired as lookout was taken sick on the trip, but in such case the master should put the next best man at his post.

But they put no one on the lookout. Before coming to the river they had Glover, a passenger, but they did not keep him on the lookout. He was not a proper person to put there, was never a seaman and was in every respect incompetent.

They sent him to the wheelhouse to help the wheelsman, because, as the master swears, it was necessary to have two wheelsmen going down the river. They had other men whom they could have used as lookouts—another wheelsman and a second mate. Indeed, if the captain had gone on deck to take charge and sent his mate to be lookout, it might possibly have been enough, but he did not even do that. When the captain ascended from the hurricane deck to the top of the pilot house and assumed command of the vessel at the most critical point in her trip, the mate, *relieved from duty*, stood beside him blowing the whistles, but with no pretence of acting as lookout.

We refer to the testimony on this point:

Charles Glover.

Folio 59. Have been brought up to farming; have sailed on a trip from Bay City to Chicago and on the propeller Mayflower from Chicago to Buffalo; that is all I have sailed; from Saginaw, that is Bay City to Chicago, I sailed as an ordinary seaman on the schooner Champion; I shipped on the propeller Mayflower to help them wood

up at Chicago, help them wood up on the voyage, and paid two dollars for my passage; was not to do any duty while the vessel was in motion; made no representation to any officer regarding my ability as a seaman; told the master I had made one trip before that and that only.

Folio 60. I acted as lookout man until we got into the river, and then I was sent up into the pilot house to help shift the wheel when necessary.

Q. How came you to act as lookout?

A. The mate kind of came to me and told me he wanted me to take the other lookout's place because he was not able to; this was about 6 o'clock P. M.; the boat was then about two hours' run from the mouth of St. Clair River; had never looked out before on the passage but acted as lookout once or twice before on the schooner; the mate told me to go forward on the promenade deck and look out for lights, and when I saw them report to him; after we got into the river he sent me to the wheel, about two or three hours before the collision; no one took my place as lookout.

Folio 53. *Q.* What did you do from that time?

A. I acted as lookout until we got to Marine City.

Q. State whether you had any conversation with the captain after leaving Marine City?

A. I did; he wanted I should remain on board as watchman and said he would give me $25 a month; he said if they had a trial he might want me as a witness.

Q Did you sign articles as lookout?

A. No, sir; he said he would do that; that he would put my name down on the ship's books as watchman; I signed the protest at Captain Woodworth's request.

Folio 66. *Q.* What were the names of the two lookout men employed on the Mayflower?

A. There was not but one until I was employed; I don't know the name of the man who was taken sick and whose place I took; I was the one lookout and the man who took sick, whose name I do not know, was the other one.

Folio 68. Witness states that he is unacquainted with the signals used and does not profess to be a sailor.

Nelson Woodworth, Master.

Folio 181. Don't remember the man's name who was acting as lookout; the man shipped as lookout was taken sick on the passage down and I was acting as lookout in a measure; I knew the man was sick and we were all looking out, that is, I was, and I knew my mate was because I could see him occasionally; there was another man called upon by the name of Glover; he took this man's place or stood by to do anything he was asked to do; you frequently have to have

a second man at the wheel, for instance, if we wanted the wheel hard over to get around quick there is a man sent to the wheel to assist the single man.

Folio 190. Calls Glover a "supernumary assistant wheelsman," and states that he was not shipped as lookout but paid a part of his passage in money.

Josiah Woodworth, Mate.

Folio 204. At that time the regular watchman had been taken sick and there was a young fellow in his place who came aboard at Chicago and was acting as lookout man.

Q. When did he go on lookout in that watch?

A. Shortly after I found out the man was sick and could not come forward, I went and asked him if he would go and stand as lookout at night; there was nobody on deck had anything to do with the vessel but this young man, myself and the wheelsman; the second mate was below, off watch.

Folio 210. *Q.* Where was your lookout when the captain came on the pilot house, this young Glover?

A. In the pilot house.

Q. How long had he been there?

A. Ever since we came into the river; I sent him to the wheel-house because I have always been accustomed to put the lookout man there to assist the wheelsman to put the wheel over as occasion would require; of course it is heavy and one man can't handle it quick enough.

This is substantially all the testimony there is on the subject of lookout. That a vessel of the size and speed of the Mayflower should be running down the river St. Clair on a foggy night, in the height of the season, continually passing vessels on either hand, within hearing of the whistles of an ascending steamer, without a lookout or any one upon the forward part of the vessel detailed to watch for lights, was a gross violation of duty.

In the Steamboat New York vs. Rea., 18 How. 223, this court condemned the steamboat because she had no person stationed on deck as lookout, although the master claimed to have been on that duty himself. It seems he stood upon the upper deck some 15 feet above the water and 60 feet from the bow of the steamer and was at the time engaged in giving directions for the management of her tows.

The master of the Mayflower was occupying precisely the same position. It is true the mate stood beside him, but he was standing there not as lookout but as an officer of the deck relieved from duty and blowing a whistle. See also

Propeller Genesee Chief; 12 How. 463.
St. John vs. Paine, 10 How. 585.
Whitridge vs. Dill, 23 How. 448 and 452.

In this case the master had directed the steward, a colored man, to keep a lookout, and added that he was somewhere about the main deck. It appeared, however, that all hands had been called to take in sail and the court condemned the schooner for the want of a proper lookout.

See also The Gratitude, 3 Ben. 108, where it is held that the steward who was standing by the companion way and was not a mariner and had not been stationed as a lookout was not a proper lookout.

The Hippodame, 6 Wall 212.

Held that the master of a steam propeller is not a competent lookout though she be a river propeller and not a steamer of larger size. There should be a lookout specially placed to see what is ahead.

The Parkerrburg, 5 Blatch. 247.

Held that the officer in charge of the navigation of the vessel was not a competent lookout and that the pilot house was not a proper place.

See to the same effect
Hazlett vs. Conrad, 1 Dill. 79.

IV.

THE MAYFLOWER WAS ALSO IN FAULT FOR RUNNING AT TOO GREAT SPEED.

The substance of the testimony upon this point is that she ran down the river at her usual speed until arriving at St. Clair, from this to Haughans and Bowen's dock under check, and from here to the collision at full speed again. Her engine was not stopped and backed until just as the boats were coming together, and too late to have any effect upon her speed.

The cross libel alleges at two different places that the Mayflower was under check all the way down the river. This is certainly not proven. We give a summary of the testimony upon this point:

Nelson Woodworth, Master.

Folio 183. Says in substance he saw a light three points on his starboard bow; that he instantly blowed three whistles as an alarm, stopped his engine and rung to back, which she did at once; the boat continued to have headway; she made probably from twenty to thirty turns back before the collision took place; she might have been going still at the time the collision took place five miles an hour; she might have been going four, she might have been going three; not to exceed five, probably not less than three.

This is all the master says with regard to the most important fault on the part of the Mayflower. We reply:

1. He could not know from his position on the top of the pilot house how many turns backward his engine made.

2. That having sworn that in his opinion his boat had made twenty or thirty turns backward he admits then she was going five miles an hour, or about half speed; that, if this be so, her speed before backing must have been full speed.

3. We shall endeavor to show that the boat had no time to make over five or six turns back, if even so many.

It is at least implied from the captain's testimony, in view of what follows, that she was going at full speed at the time he rang the engine bell to back. If this is not so it is passing strange that the officer in command was not asked whether he was under a check. He admitted saying in his protest (folio 192) that he passed port Huron at 10:30. It appears from Sloan's testimony (folio 102) that Ricord's dock is about eighteen miles below Port Huron. As the collision occurred not later than 11:30 the boat must have been running at her best speed to reach Ricord's at that time.

Josiah Woodworth, Mate.

Folio 196. I checked the boat after we got below St. Clair and she had run under check until we had got down within—I suppose we reached the docks (indicating Haughan's and Bowen's docks); we were running at that time under check, viz.: when passing Bowen's dock where the fish light was.

Folio 214. *Q.* When the captain came upon the pilot house was there any order given or signal to the engine?

A. After he had been up there a minute, or it might have been two minutes, it cleared up a little bit and the remark was made that he would go ahead a little faster and get down to Marine City before it shut in thicker.

Q. You say the remark was made—didn't he give the order?

A. I don't recollect giving any order.

Q. Or signal to the engine?

A. I think he did ring the engine to go ahead a little stronger.

Q. Now, what was the signal to go ahead a little stronger?

A. Four bells rung.

Q. That means all right?

A. It means to go ahead a little stronger.

Q. What do the four bells mean—or do not they mean, when the engine is running, when she is hooked on—does it not mean to go full stroke, or full speed?

A. In a fog in this kind of way the engine is checked down, and very often his management was, if the engine run a little too fast or slow, he would send word to them, but as a general thing on an engine starting off in thick weather, the engineer would not work her strong until he was satisfied everything was all right; but there was nothing said to the engineer here or signals given to him, and I don't know how he worked her.

Q. Was there any other signal given to the engine until the bell was rung to check and stop?

A. Not that I know of. Her average running is about nine miles an hour.

Folio 216. *Q.* Running as you think she was, how far would that propeller run before her headway could be stopped after the signal was given to stop and back, down the current, and in that current, with her load of cargo and the headway she has on?

A. It might have been sixty or eighty or a hundred rods, maybe half a mile for all I know.

Q. Do propellers stop their headway readily anywhere?

A. No, they do not; it is a pretty hard thing to stop a boat loaded coming down stream. She had a full cargo.

From this testimony we gather that the propeller was running somewhat under a check until the captain came to the top of the pilot-house. What "somewhat checked" means it is difficult to say. It may mean half speed; it may mean three-fourths; it may mean nothing.

Charles Clover.

Folio 62. State whether you heard any signal given to the engineer at or about the time you passed the wood dock?

A. Yes, sir, I think I did; I heard four little whistles; supposed they were given to go ahead; signal given from the top of the pilot-house.

Joseph Merrill, Engineer.

Folio 149. The first order I received after getting into the river that night was to slow the engine; we reduced the steam from 55 to 40 pounds directly after the first time I cheeked; this was probably an hour or an hour and a half before the collision; the speed with 55 pounds is about nine and a half miles an hour.

Folio 152. When I first heard the signals—speaking of the whistles—I could not designate any place where I was standing; had probably had an order five minutes before this time; this order was to work her stronger; I obeyed that order.

Folio 153. States that she would run about 1,200 feet, loaded as she was that night and on that speed, before her headway would be stopped by backing her.

Folio 146. Says: "I think, after entering the fog, our vessel was run under a check a portion of the time; she was run under a check when the fog was more dense than at other times.

Folio 147. I saw light on our starboard side—speaking of the Dove's light. I should judge the Mayflower was then going at the rate of five miles an hour through the water.

It is a fair inference from the testimony that for a portion of the time coming down she was not running under a check, but that she run so only when the fog was dense. He thus corroborates the testimony of the other witnesses, who state that immediately after passing Bowen's, as the fog lifted, the engine was signalled to go ahead stronger. Even if the propeller was going only five miles an hour through the water when the Dove's light appeared, this, added to the current of three miles, would make a speed of eight miles, which, under the circumstances—knowing that the Dove was in that vicinity—was grossly excessive. "The first order I received after the Dove's light appeared was to *check*." Folios 147, 152. Clearly he would not have received this order if his boat had then been under check. The first order in that case would have been to stop and back. The inference from his testimony is that he was not at his engine, but was at the gangway when he got the signals to check, stop and back. The Dove's light had then been seen, about four hundred feet off. The boats at such speed would come together in twenty or twenty-five

seconds. But the engineer had to stop his engine, then commence backing, and in the limited time even of fifteen or twenty seconds he could get not over five or six revolutions backwards.

Folio 153. He admits that his twenty turns backwards was only an estimate; he took no notice of the number.

The mate says:

Folio 199. That it was not more than ten or fifteen seconds from the time the light of the Dove appeared until the collision.

Considering what was actually done in that time, it will appear that it was probably not five seconds, so that the engine could not have made any such number of turns backward. The engineer stated (folio 152) he was carrying 40 to 45 pounds of steam, and could make from 45 to 50 turns ahead a minute. If this be true, he could not make in the five seconds he really had over one or two turns backward. If he had ten seconds, as the mate says, he could not have made over five or six. The cross-libel itself claims (folio 382) that the Mayflower had commenced backing. There is no claim that this had in the least deadened her headway.

James Hawkins.

Folio 36. Says: "When the Mayflower passed father's dock I judged she was going pretty fast."

Wm. H. Bowen.

Folio 48. Says: "That as she passed the dock she was going pretty fast."

Jos. Hubbard, passenger on the Dove.

Folio 22. Says: "Should think the propeller was running at a good speed when she came up to us. Can not tell whether she was checked or not—should think she was coming at a pretty good jog."

George Kimball.

Folio 23. Says: "She seemed to be under pretty good headway—going pretty strong."

We think this is all the testimony which throws any light upon the speed of the Mayflower.

We think the conclusions are irresistible:

1. That the Mayflower was run at full speed, or nearly full speed, from Bowen's dock to the place of collision.

2. That the bell to check, stop and back was rung while the engineer was at the gangway and not at his post, and that the boats were then only about 400 feet apart.

3. That in that distance there was no time to lessen the speed of the Mayflower.

4. That there was a gross violation of Art. 16, requiring that all steamers shall proceed in a fog at a moderate speed.

V.

THE SPEED OF THE DOVE DID NOT EXCEED THREE OR FOUR MILES AN HOUR AFTER THE GROUNDING, AND AT THE TIME OF THE COLLISION SHE WAS NEARLY OR QUITE AT A STANDSTILL.

John A. Sloan says.

Folio 96. *Q.* After you rung to go ahead and came near getting aground, about what speed did you make then, when she heeled down and you ported?

A. I say I think, probably, between three and four miles; I know we had been going very slow; if it had been clear weather we ought to have made Ricord's dock in less than half the time.

Folio 103. It appears that he reached Marine City behind time, and counsel endeavors to make him admit that he was anxious to make up the time after leaving Marine City. He says:

The minute the fog set in she checked right down and stopped.

Folio 96. He gives a further reason for running slow after grounding in that he intended to touch at Ricord's dock and land some freight.

John Westaway, engineer.

Folio 83. States that after leaving Marine City the boat was running slow, slower than her usual speed; that he got a signal to check after leavieg Marine City, and then one bell to stop; then in about a minute another signal to go ahead; this was at the time she grounded.

Folio 84. *Q.* After going ahead, state what was your speed.

A. He rung another bell after I started, and after the one bell he rung four bells, and *I opened her out a little—a very little*, and I left her under a check; she was working under a check; says he left her under a check, after the four bells were rung, for two reasons. In the

first place she was a boat that if you open her right out she would not go at all; she would squat right down in the water and play around, and would not make more than four or five miles an hour, to work the engine as fast as she could work. You have to open her out gradually, probably she would run a mile before you could open her engine so that the boat would make decent time. The other reason was it was foggy weather; the next signal was to check; three bells.

Q. During that time, what had been the relative speed of the boat between the four bells and the three bells.

A. Well, as far as I am able to judge under the circumstances, I do not think the boat could have been going over five miles an hour at that time, and because she was a boat that picked up her headway very slowly; the next signal was one bell to stop, and two to back; I stopped her engine and backed her as hard as I could, because the weather being foggy I felt as though probably there was a collision at stake, and I backed her as hard as I could back her; should judge she made as many as three turns backward before they came together; at the rate she was going up stream this ought to about stop her.

Folio 87. It could not have been over two or three minutes from the time I got the order to hook her on before I received the order of three bells to check.

Folio 84. He explains the meaning of four bells; it was to hook her on, as before that he had worked her by hand.

He says:

Folio 87. That after the Dove had grounded he went to the gangway to see how thick it was, because if it was not thick he would open her out and let her go faster, and if it was thick he would let her run along as she was, *because he had left her under a check.* Then I went straight back to the engine-room; when I got back I was in the act of opening her out; had my hand on the throttle valve when the bell gave three bells to check, and I checked her a little closer; that he shut the throttle valve as tight as he could, and run down the cuts; from the time I got the order to hook her on before I got the order of three bells to check, it could not have been over two or three minutes—a very short time; I only walked to the gangway; looked out and came right back; had my hand on the throttle; just got hold of it, and had not had time to open it any before three bells came.

It is true. he says.

Folio 84. "I got four bells to hook her on, and run her to suit myself, and in folio 88 he answers promptly to the question, "When you got the order to run her to suit yourself, that meant full speed if you chose to let her out;" Yes, and he then says that her full speed was thirteen or fourteen miles an hour.

From these expressions it is argued that on receiving the

order to hook her on he opened the engine to her full speed, and actually was going thirteen or fourteen miles an hour when the order to check, stop and back came.

We reply to this that it is not a question of what the engineer *might* have done or felt at liberty to do in his discretion under the order to hook her on, but what as a matter of fact he *did* do, and as to this there is a conflict of testimony. Using the discretion given him, and on account of the fog, he opened her out "*a very little*" after receiving the four bells, running to the gangway to see how thick it was, immediately returned to the engine, and by the time he laid his hand on the throttle valve received the order to check, stop and back.

Henry Campbell.

Folio 50. Says: "When we saw the light of the Mayflower we were then running slow, about the speed we had been running." Previous to that he says: "We were running under a check and quite slowly."

Albert H. Robinson.

Folio 14. Says "I don't think the Dove swung much under this order to port; we were running very slow; she may have swung a little; I think after we saw the light that the bell was rung to stop and back; can't tell how long this was before the collision because just as soon as we saw the propeller she was right on to us; the engine, I think, was stopped and reversed before the collision; having steerage way we were running slow before the bells rang; after they rang the Dove had very little, if any headway.

Joseph M. Hubbard.

Folio 19. I remained out on deck until the collision occurred; I think the Dove was running under a check from the time I came out on deck; after I saw the propeller's light I heard Captain Sloan's bells ringing; cannot tell what these signals were; thought she was backing; I got down to our yawl boat, which was towing astern, and found it under the quarter where she would not have been if the Dove had had her headway on.

George Kimball.

Folio 23. After leaving Marine City the Dove blowed two blasts of her whistle quite frequently; our boat seemed to be going slow at that time; I am quite sure the Dove's engine was stopped, I think reversed, before the collision; the bell was rung to stop and back but a short time before the collision.

Wm. H. Dana.

Folio 27. Was in his bed on the main deck; heard the bell ring to stop and then to back, the bells being closer together than they usually come; next heard the man singing out "Back her strong;" she was backing; they had got the bells before that; beside the stop and back bell they had got the jingle bell to back her strong.

John S. Fletcher.

Folio 73. Witness was a passenger, and in answer to the question State at what speed, generally, she appeared to be running up the river, whether her course after leaving Marine City was faster or slower than the ordinary speed of the vessel, he says he thought it was slower; supposed they were running slow on account of its being so foggy; that was my idea of it. He repeats this (folio 75.)

This is all the evidence there is upon the speed of the Dove. We have reviewed it somewhat in detail, and we cannot see how, upon the testimony, it can be claimed she was going at a greater speed than four or five miles an hour when the order was given to check, stop and back. We claim that this testimony establishes in substance as follows:

1. That she was running slow from Marine City to the place of grounding.

2. That after she was gotten off, and the engineer received the four bells to book her on, he exercised his discretion and, as he says, opened her out a very little.

3. That within two or three minutes thereafter he received an order to check, stop and back, and that this order was obeyed.

We must come to the same conclusion if we look at the probabilities of the case. Nothing had occurred to cause them to increase their speed. The fog still continued, and they were very near to Ricord's dock, where they intended to stop. They were running against a current of three miles an hour, which would not have permitted them to gather up much speed before the order to check, stop and back was received. They were also within hearing of the whistle of the Mayflower, and it can hardly be presumed that another vessel would be guilty of her gross fault.

Again, there is no claim in the answer to the original libel

or in the cross-libel that the Dove was proceeding at too great speed. In the six specifications of fault on the part of the Dove contained in the cross-libel (folio 383–384), there is no claim that her general speed was too great. The only claim relating to this is that the Dove did not stop or back. There being no such allegation in the cross-libel, we submit that as matter of law the Dove could not be condemned upon this ground. In conclusion, we submit that the Mayflower is shown to have been guilty of three faults :

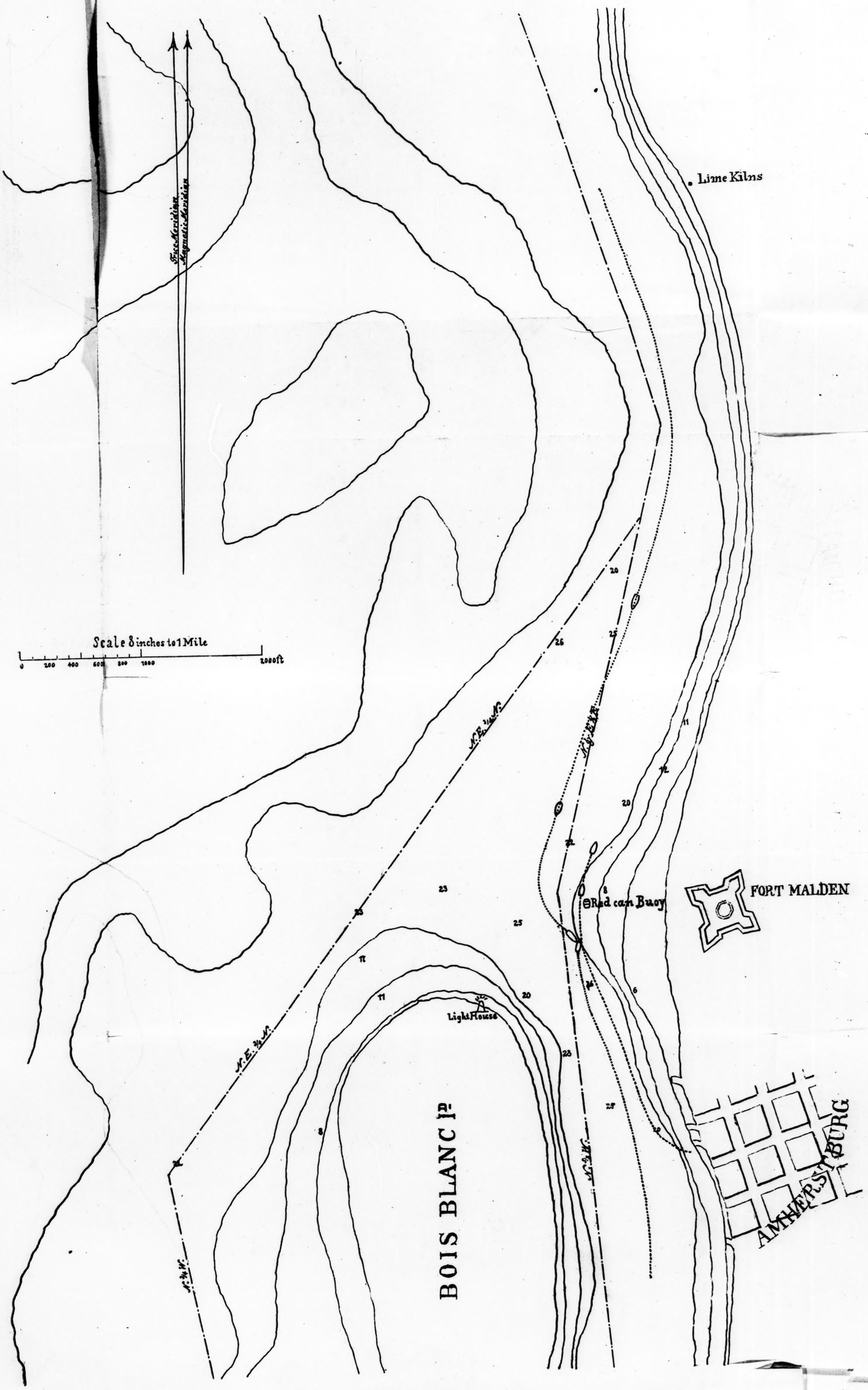
1. Having no lookout.
2. Running at too great speed.
3. Blowing signals that indicated she was on the Canadian shore when, in fact, she was running on the American side.

We also consider it faulty navigation for a master to go upon the pilot-house and take the command of the vessel away from the mate at the critical moment when the signals of an approaching vessel are heard, and the position of his own boat is better known to the mate than it can be to himself. A change of command immediately prior to a collision, and after the approaching vessel is seen and heard, was expressly condemned by the late Judge Hall, in the case of the "Scioto," and is not regarded as good seamanship.

We submit that no fault can be found with the navigation of the Dove, and that the decree of the Circuit Court should be affirmed with costs.

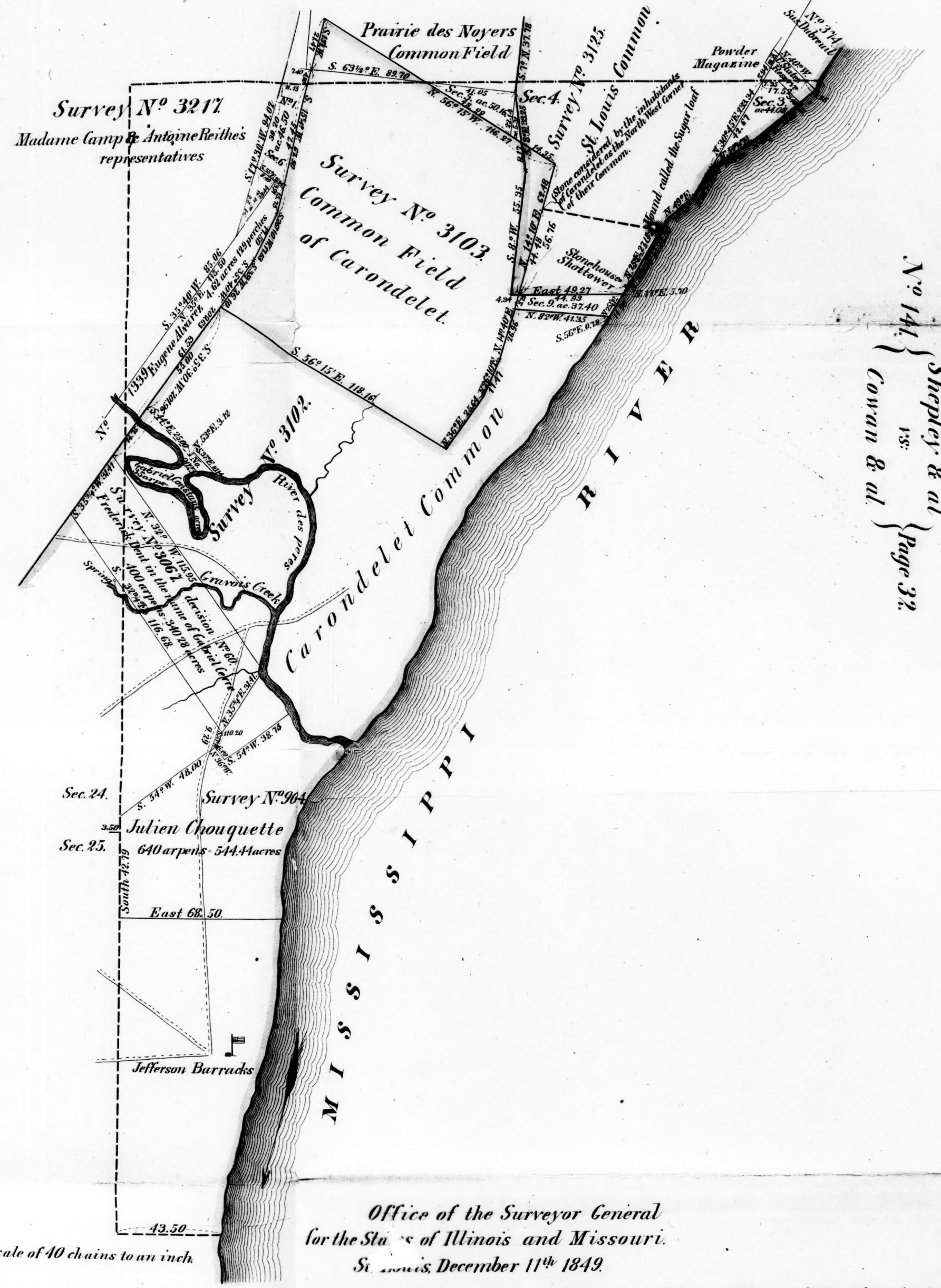
NEWBERRY, POND & BROWN,
Libellant's Proctors.

H. B. BROWN,
WM. N. MOORE,
Advocates.



Lime Kilns
Scale 8 inches to 1 Mile
0 200 400 600 800 1000 2000 ft
Red can Buoy
FORT MALDEN
Light House
BOIS BLANC Id
AMHERSTBURG

Township 44 North of the base line Range 7 East of the 5th principal Meridian.



Scale of 40 chains to an inch.

Office of the Surveyor General
for the States of Illinois and Missouri.
St. Louis, December 11th 1849.

The above plat of fractional Township 44 North of the base line Range 7 East of the 5th principal Meridian is correct copied from the original plat of said Township, on page 70 of Volume 3 Missouri plats and from a loose plat thereof approved on the 3rd of August 1839. This plat is also in conformity with the field notes of the surveys of the said Township, which notes and the plats copied from are all on file in this office.

M. Lewis Clark,
Surveyor General.

Exhibit B. N. 2.

MISSISSIPPI RIVER

Shot Tower

Old Micheau stone house and improvements

Log Stable

Well

Micheaus Cabin

OLD CARONDELET ROAD

PRESENT CARONDELET ROAD

95.

St. Louis Common

Fractional Section 9.
William M. McPherson

Carondelet Common

Jeffingwell Surveyor

No 141. { Shepley & al. vs: Cowan & al } Page 91

OLD ROAD

92

Stone

96

Peter Delore 4 arpents 10.50 chs.

Thos. Chartrand 4 arpents 10.75 chs.

10.25 chs.

Sinkhole

18 feet South of Sect. Line

Cabin & improvement of Thos Chartrand Senr

Cabin of Thos Chartrand Jr

STRINGTOWN ROAD as now traveled

294

292

old Stone set by Jos. G. Brown

Carondelet Common

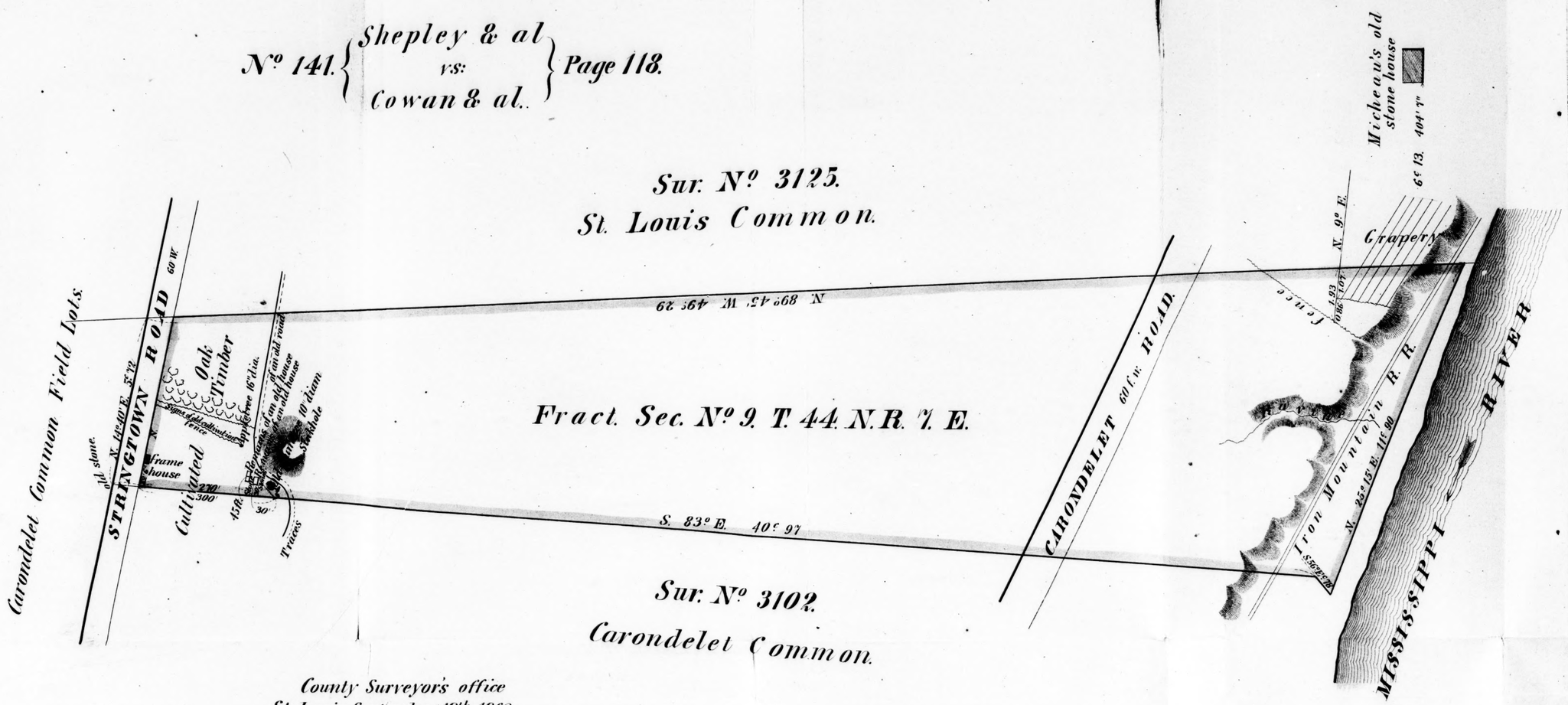
B. Marechall

Peter Delore

Thos Chartrand

Fields

No. 141. { Shepley & al vs: Cowan & al. } Page 118.



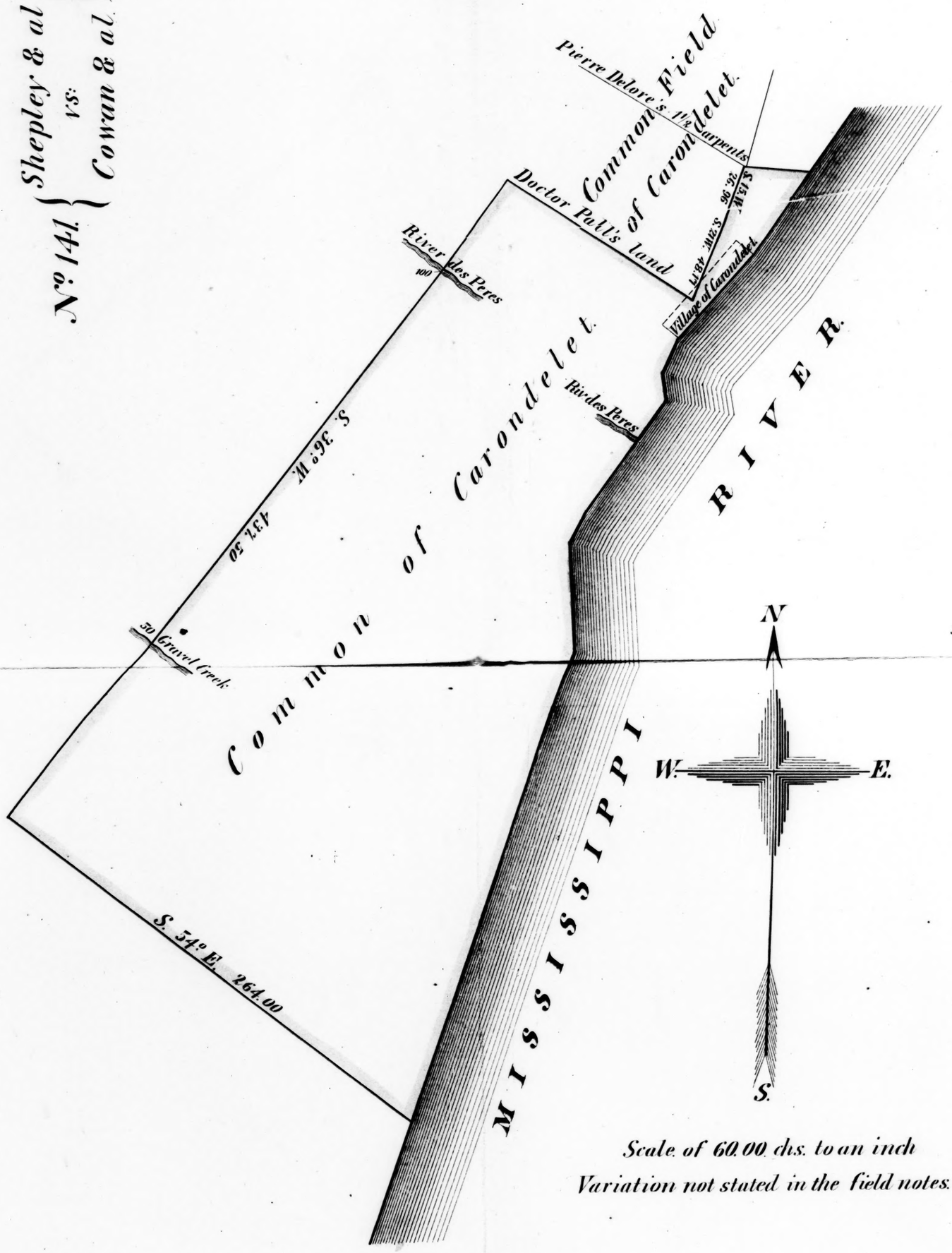
County Surveyor's office
St. Louis, September 18th 1862

The above plat is a correct representation of a Survey of fractional Section 9 Township 44. N. R. 7. E. within the County of St. Louis as executed by me, It also represents the position of the remains of two buildings situate on said fraction, near the South West corner thereof and of certain fruit trees and signs of cultivation.- On the Eastern end of the tract I have laid down the position of a grapery and of a Ravine.-

Wm. H. Cozens
County Surveyor,
St. Louis County,
Mo.

D.

No. 141 Shepley & al vs. Cowan & al } Page 590



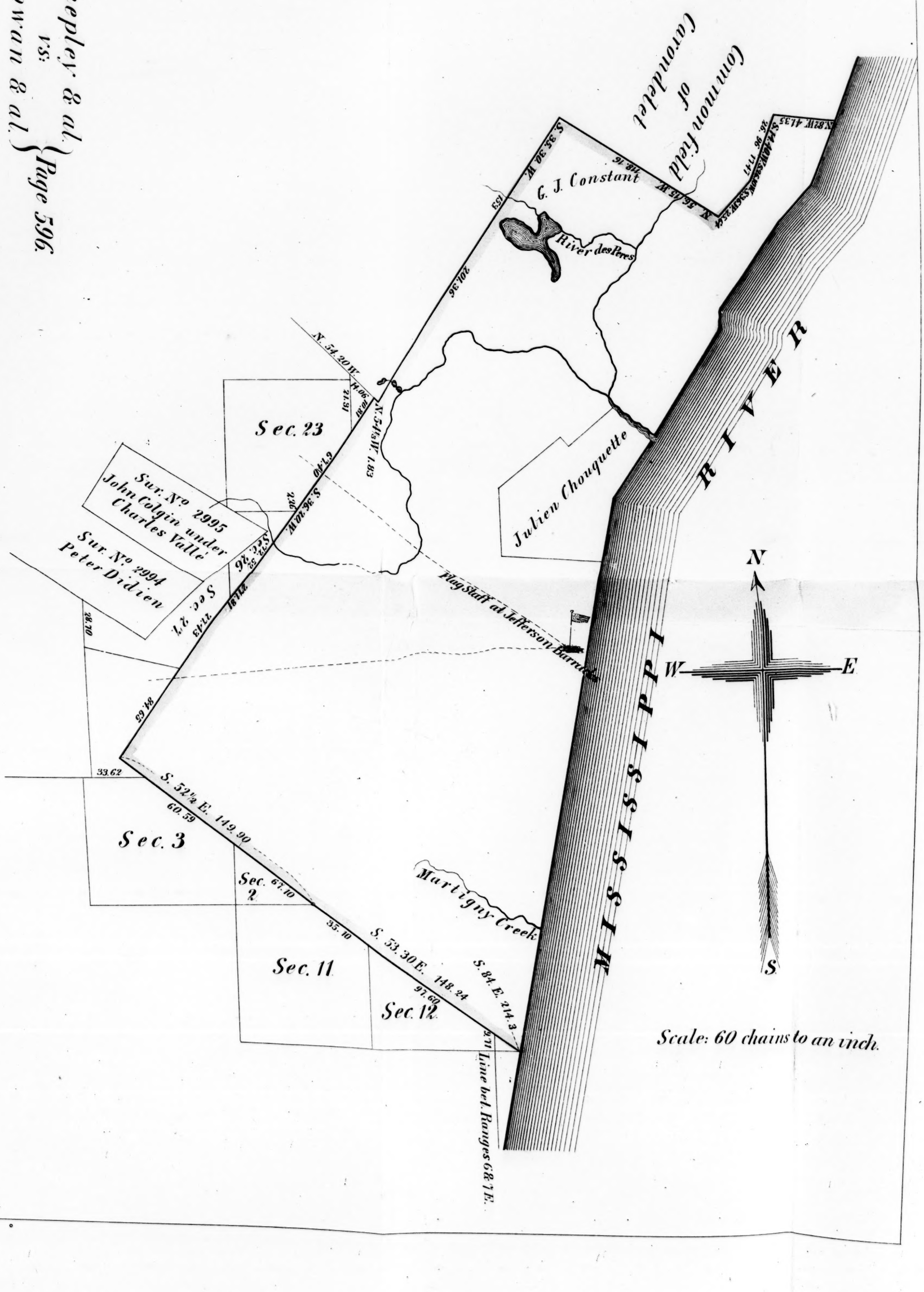
Scale of 60.00 chs. to an inch

Variation not stated in the field notes.

G.

Ts. 43 and 44 N. Ranges 6 and 7 East of the 5th Pl. Meridian.

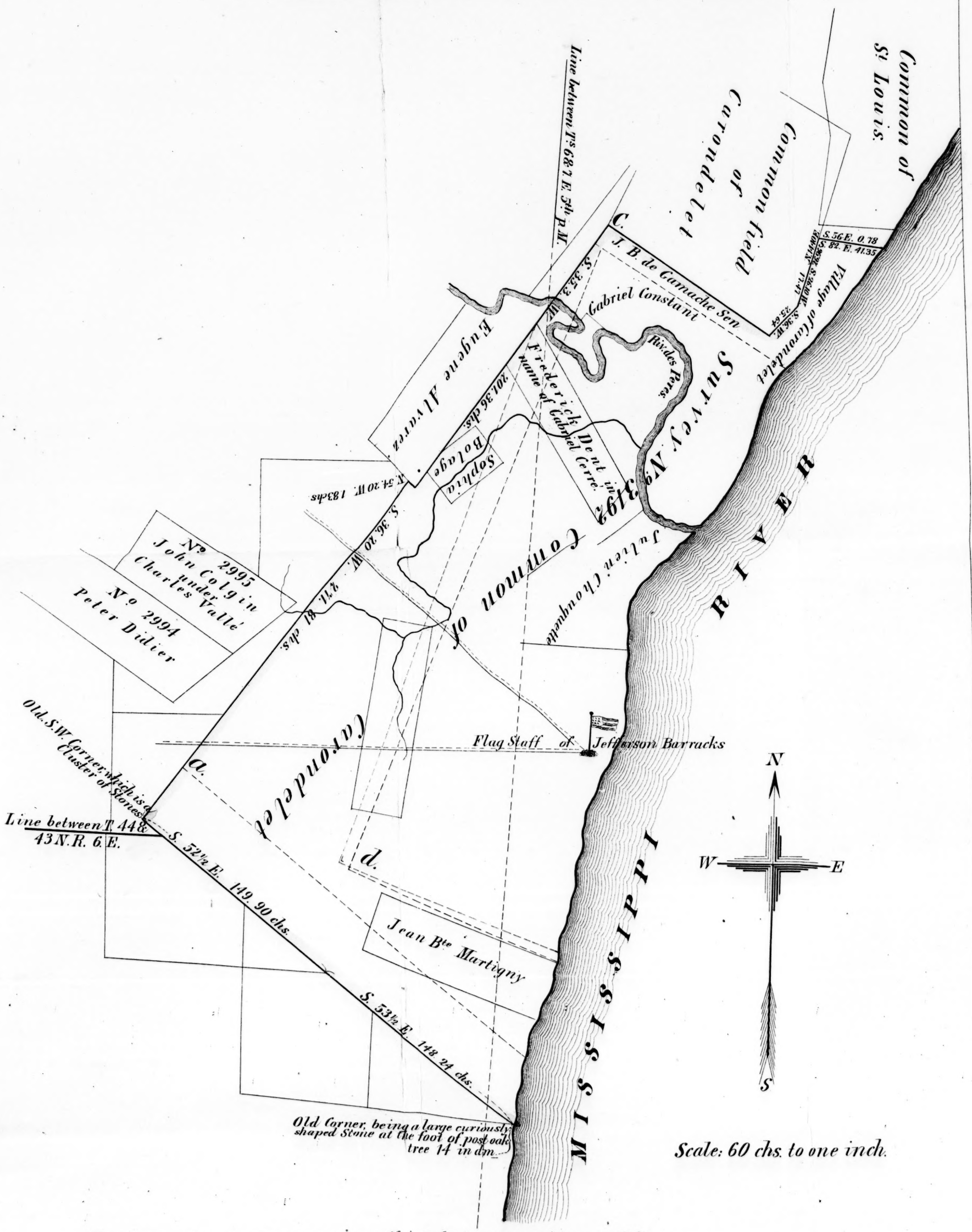
No. 141. { Shepley & al. vs. Cowan & al. } Page 596.



No. 141 { Shepley & al vs Cowan & al } Page 636.

X.

Ts 43 and 44 N. Rs 6 and 7 E. of the 5th P. M



Scale: 60 chs. to one inch.

For remarks accompanying this plat see port page 72 of this Book omitted here for want of room.

T. 43 and 44 N. Rs. 6 and 7 E. of 5th P.M.

Page 70 blank
71.

Doc: A. with Sur. Genl letter of 23. March 1853
See. p. 66.

Line between Rs. 6 & 7 East

Common field of Carondelet

Survey No. 3125 of St. Louis.

Line of arpens below the Sugar loaf common

Sugar loaf mound

Delor

Sec. 9. Ac. 37.40

139.24 chs. = 247.74 arps.

Tract claimed by the legal Reps. of J.B. Camache Senr as containing 6 × 40 arps. (= 17.50 × 116.66 chs.)

136.33 chs = 46.88 arps

about the situation of the arps conceded to Gl Constant Lt Gov. Trudeau. Not Surveyed.

No 2023 Gabriel Constant

Survey 3067 Frederick Dent, as Gabriel Cerre 400 arpens

Dec. No 60, legal repe of 340.28 acres

River des Peres

Village of

Carondelet

R I V E R

No 1339. Eugene Alvarez 462.12 acres

Survey No 3068 Decision No 279 Sophia Bolage or Legal Reps. 150 arps = 127.60 acres

Sec. 24.

Creek

Survey 3102

Survey No 904 Julien Chouquette 640 arps = 544.44 acres.

Sec. 23.

Sec. 26.

Sec. 27.

Survey of Carondelet

Survey 9905 29 acres.

Survey No 2993. Dec. No 121. Legal Reps. Survey Pierre Delor or 340.28 acres. 400 arps.

Former Flagstaff of Jefferson Barracks.

Sec. 36

Sec. 35.

Sec. 34

Sec. 6.

Sec. 1.

Sec. 2.

Sec. 3

Survey No 3119 Dec. No 170 Jno. Bte Martigny or Rep's.

Survey 3317 Dec. No 144 J. B. Deschamps or Rep's. 160 arps.

M I S S I S S I P P I

Scale of 40 chains to an inch.

Shepley & al } Page 691
v.s:
Cowan & al.
No. 141.

RANGE 12. EAST. 6th P.M.

RANGE 13. EAST. 6th P.M.

DOUGLAS CO.

TOWNSHIP 15. NORTH.

TOWNSHIP 15. NORTH. RANGE 14. WEST 5th PRIN MER.

Initial Point U.P.R.R

NEBRASKA

IOWA

OMAHA

UPPER GROVE SHOPS

STATION

BRIDGE

BRIDGE LINE

TRANSFER GROUNDS.

LITTLE PAPILLON

BIG PAPILLON

UNION PACIFIC RAILROAD

MISSOURI RIVER

Union Pacific Rail Road Company's Offices

13 WILLIAM STREET NEW YORK

OCTOBER 19th 1864

In accordance with the act of Congress, approved July 1st 1862 entitled "an act to aid in the construction of a Rail Road and Telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same, for Postal, Military and other purposes" and the act amendatory thereof, approved July 2nd 1864, the Union Pacific Rail Road Company, a corporation formed under and in pursuance of the said act, hereby designate the red line on this map as the permanent location of the route of the said road, for one hundred miles west of the western boundary of the State of Iowa.

John A Dix President.
Chas Fuller Secretary.

PLOT

of the claim of

MRS. ROMIE,

in the southern part of the

CITY OF

SAN JOSE,

Surveyed April 14, 1868, by

A. T. Herrmann,
Surveyor

30' : 1'

POND OF ACEQUIA

A. PFISTER.

S. 1° 5' W. 231'

ACEQUIA

13'

N. 30° 37' W. 146' 6"

16'

33'

BRIDGE

Gulnac's Mill.

No 127. Romie vs. Casanova Page 113

Adobe House.

MRS JANE THOMAS.

South Line of Romie Claim measured from Adobe House
N. 65° 30' E. 515'.

N. 65° 28' E. 498'.

Occupied by Mrs. Jane Thomas.

F E N C E.

S. 59° 45' W. 397'

Occupied by

CASSANOVA.

South Line of Ceseña Lot according to measurement from Adobe House

ALLEY

South Line of Ceseña Lot as shown by Chas. Messerve
S. 65° 28' W. 375'.

Ceseña Lot.

Chas. Meserve.

Ramada of Padilla.

110'

ADOBE HOUSE

as located by F. Buelna and Chas. Meserve.

144'

FENCE LINE

A. T. H.

(Pencil line)

75 Varas

30'

BEG.

N. 30° 32' W. 75 Varas

N. Var. 16° 23' E.

MONTEREY ROAD

Exhibit A. Map.